SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 417

NEW WORLD LIFE INSURANCE COMPANY,
PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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[fol. 1]

IN COURT OF CLAIMS OF THE UNITED STATES

No. 43549

NEW WORLD LIFE INSURANCE COMPANY, a Corporation,

vs.

THE UNITED STATES

1. PETITION—Filed April 29, 1937

To the Honorable, the Chief Justice and the Judges of the Court of Claims of the United States:

The claimant, the New World Life Insurance Company, represents and alleges as follows:

That claimant is a corporation organized and existing under the laws of the State of Washington, having its principal place of business and correct post office address in the City of Seattle, and is engaged in the business of selling life insurance policies or contracts.

Count I

(1) That on or about the 21st day of February, 1930, and in accordance with the provisions of the Revenue Act of 1928, claimant filed with the Collector of Internal Revenue (hereinafter referred to as collector) in and for the District [fol. 2] of Washington its income tax return for the calendar year 1929, in which its net income subject to tax for said year was reported as $50,622.99, and an income tax was shown to be due thereon in the sum of $5,568.53.

(2) That the income tax shown to be due on claimant's said return was paid to said Collector on the dates and in the amounts as follows, to wit:

Date	Amount
Feb. 25, 1930	$1,392.14
June 12, 1930	4,176.39

(3) That subsequent thereto the Commissioner of Internal Revenue (hereinafter referred to as Commissioner) through his duly authorized representatives made an ex-

amination of said return, and as a result thereof the Commissioner on October 9, 1931 redetermined the claimant's net income for said year 1929 to be $63,430.42, and on or about March 11, 1932 assessed against the claimant an additional tax thereon for said year in the amount of $1,408.82; that said additional tax of $1,408.82, together with interest thereon in the amount of $166.41, was paid under protest by the claimant to said Collector on or about March 21, 1932.

(4) That among other deductions taken by claimant in its said return for 1929, claimant deducted as investment expenses the amount of $51,134.56; that on the examination of claimant's said return, as aforesaid, the Commissioner disallowed as a deduction, $17,149.92 of said investment expenses of $51,134.56 deducted by the claimant; that the Commissioner allowed a deduction of $4,745.65 for investment expenses, representing traveling expenses incurred and paid by claimant in connection with its investments for the year 1929 which said amount of $4,745.68 claimant did not deduct in its return for said year; that the Commissioner disallowed other deductions for said year, viz.: [fol. 3] $1,828.68, representing 4 per cent of the mean of reserve funds, and $2,993.30, representing depreciation; that the Commissioner excluded from the net income reported by claimant in its said return the sum of $4,418.82, representing exempt interest; that said adjustments resulted in the Commissioner's increasing claimant's net income for said year 1929 from $50,622.99 to $63,430.42, as aforesaid.

(5) That on or about the 22nd day of April, 1933, and in accordance with the provisions of law in that regard and the Regulations of the Secretary of the Treasury promulgated in pursuance thereof, claimant duly filed with said Collector a claim for refund of income taxes overpaid for said year 1929 in the amount of $1,894.89, together with interest thereon, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow as deductions from gross income the following items:

Investment expenses amounting to $17,149.92 within the meaning of Section 203 (a) (5) of the Revenue Act of 1928;

Depreciation in the amount of $2,993.30 within the meaning of Section 203 (a) (7) of the Revenue Act of 1928;

4% of the mean of reserve funds in the amount of $1,828.68 within the meaning of Section 203 (a) (2) of Revenue Act of 1928.

(6) That the Commissioner rejected the claimant's said claim for refund in its entirety, and notified the claimant of such rejection by registered mail on October 25, 1935.

(7) That the correct taxable net income of claimant for said year 1929 was $46,280.50, computed by deducting from the net income of $63,430.42, as redetermined by the Com- [fol. 4] missioner, $17,149.92 representing investment expenses within the meaning of Section 203 (a) (5) of the Revenue Act of 1928, which the Commissioner illegally disallowed; that the correct income tax payable by claimant for said year 1929 was $5,090.86; that the assessment and collection of an income tax for said year 1929 in excess of $5,090.86 was illegal and void; that the amount of income tax overpaid by the claimant for said year 1929 was $1,886.49; that the amount of interest overpaid by the claimant on said additional assessment of income taxes amounting to $1,408.82 for said year 1929 was $166.41; that the refund of $477.67 of said overpayment of $1,886.49 was barred by the statute of limitations; that the Commissioner's action in failing and refusing to allow claimant's said claim for refund in the amount of $1,575.23 (comprised of said overpayment of income taxes of $1,408.82 and said overpayment of interest of $166.41) together with interest on said amounts at the rate of 6 per cent per annum from the date of payment thereof was illegal and without any warrant or authority in law; that there is now justly due and owing to the claimant by the United States the sum of $1,575.23 with interest at the rate of 6 per cent per annum computed from the date of payment, viz., March 20, 1932; and that claimant is justly entitled to recover said amounts from the United States after allowing all just credits and offsets.

(8) That no action upon claimant's foregoing application for refund has been had before Congress or either House thereof, or any of the departments of the Government other than the Treasury Department, or in any other Court; that claimant has fully set forth in its petition the claim and the action thereon by the Treasury Department; that claimant is the sole owner thereof, and the only party interested

[fol. 5] therein, and that no assignment or transfer of the said claim or any part thereof, or any interest therein has been made; that claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way aided, abetted or given any encouragement or comfort to any persons or government in rebellion against the Government of the United States or at any time aided or abetted or in any way given comfort to any sovereign or government that is or ever has been at war with the United States.

Wherefore, claimant prays for judgment against the United States on its first cause of action for the sum of $1,575.23 with interest at the rate of 6 per cent computed from the respective dates of payment of said sum as follows:

From March 21, 1932, on $1,408.82, taxes overpaid on said date;

From March 21, 1932, on $166.41, interest overpaid on said date;

and for such other and further relief as to this Court may deem just and equitable in the premises.

Count II

(1) That on or about the 7th day of February, 1931, and in accordance with the provisions of the Revenue Act of 1928, claimant filed with the Collector of Internal Revenue (hereinafter referred to as Collector) in and for the District of Washington its income tax return for the calendar year 1930 in which its net income subject to tax for said year was reported as $59,839.94, and an income tax was shown to be due thereon in the sum of $7,180.79.

(2) That the income tax shown to be due on claimant's [fol. 6] said return was paid to said Collector on the dates and in the amounts as follows, to wit:

Date	Amount
Feb. 11, 1931	$1,795.20
June 11, 1931	1,795.20
Aug. 29, 1931	1,795.20
Dec. 1, 1931	1,795.19

(3) That subsequent thereto the Commissioner of Internal Revenue (hereinafter referred to as Commissioner) through his duly authorized representatives made an examination of said return, and as a result thereof, the Commissioner, on January 20, 1933 redetermined the claimant's

net income for said year 1930 to be $85,805.70, and on or about April 12, 1933 assessed against the claimant an additional tax thereon for said year 1930 in the amount of $3,115.89; that said additional tax of $3,115.89, together with interest thereon in the amount of $386.20, was paid under protest by the claimant to said Collector on or about April 22, 1933.

(4) That among other deductions taken by claimant in its said return for 1930, claimant deducted as investment expenses the amount of $62,690.06; that on the examination of claimant's said return, as aforesaid, the Commissioner disallowed as a deduction $21,492.21 of said investment expenses of $62,690.06 deducted by the claimant; that the Commissioner also disallowed other deductions for said year, viz.: $1,799.58, representing 4 per cent of the mean of reserve funds and $3,348.97, representing depreciation; that the Commissioner excluded from the net income reported by claimant in its return the sum of $675.00 representing exempt interest; that said adjustments resulted in the Commissioner's increasing claimant's net income for said year from $59,839.94 to $85,805.70, as aforesaid.

(5) That on or about the 22nd day of April, 1933 and in [fol. 7] accordance with the provisions of law in that regard and the Regulations of the Secretary of the Treasury promulgated in pursuance thereof, claimant duly filed with said Collector a claim for refund of income taxes overpaid for said year 1930 in the amount of $3,196.89 together with interest thereon, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow as deductions from gross income the following items:

Investment expenses amounting to $21,492.21 within the meaning of Section 203 (a) (5) of the Revenue Act of 1928;

Depreciation amounting to $3,348.97 within the meaning of Section 203 (a) (7) of the Revenue Act of 1928;

4% of the mean of reserve funds in the amount of $1,799.58 within the meaning of Section 203 (a) (2) of the Revenue Act of 1928.

(6) That the Commissioner rejected the claimant's said claim for refund in its entirety, and notified the claimant of such rejection by registered mail on October 25, 1935.

(7) That the correct taxable net income of claimant for said year 1930 was $64,313.49, computed by deducting from the net income of $85,805.70 as redetermined by the Commissioner, $21,492.21 representing investment expenses within the meaning of Section 203 (a) (5) of the Revenue Act of 1928, which the Commissioner illegally disallowed; that the correct income tax payable by claimant for said year 1930 was $7,717.62; that the assessment and collection of an income tax for said year 1930 in excess of $7,717.62 was illegal and void; that the amount of income tax overpaid by the claimant for said year 1930 was $2,579.06; that [fol. 8] the amount of interest overpaid by the claimant on said additional assessment of income taxes amounting to $3,115.89 for said year 1930 was $325.60; that the Commissioner's action in failing and refusing to allow claimant's said claim for refund in the amount of $2,904.66 (comprised of said overpayment of income taxes of $2,579.06 and said overpayment of interest of $325.60) together with interest on said amounts at the rate of 6 per cent per annum from the respective dates of payment thereof was illegal and without any warrant or authority in law; that there is now justly due and owing to the claimant by the United States the sum of $2,904.66 with interest at the rate of 6 per cent per annum, computed from the respective dates of payment of said sum of $2,904.66 as follows:

From April 22, 1932 on $2,579.06 taxes overpaid on said date;

From April 22, 1932 on $325.60 interest overpaid on said date;

and that claimant is justly entitled to recover said amount from the United States after allowing all just credits and offsets.

(8) That no action upon claimant's foregoing application for refund has been had before Congress or either House thereof, or any of the departments of the Government other than the Treasury Department, or in any other Court; that claimant has fully set forth in its petition the claim and the action thereon by the Treasury Department; that claimant is the sole owner thereof, and the only party interested therein, and that no assignment or transfer of the said claim or any part thereof, or any interest therein has been made; that claimant has at all times borne true

faith and allegiance to the Government of the United States and has not in any way aided, abetted or given any encouragement or comfort to any persons or government in rebel-
[fol. 9] lion against the Government of the United States or at any time aided or abetted or in any way given comfort to any sovereign or government that is or ever has been at war with the United States.

Wherefore, claimant prays for judgment against the United States on its second cause of action for the sum of $2,904.66 with interest at the rate of 6 per cent computed from the respective dates of payment of said sum as follows:

From April 22, 1932 on $2,579.06 taxes overpaid on said date;
From April 22, 1932 on $325.60 interest overpaid on said date;

and for such other and further relief as to this Court may seem just and equitable in the premises.

Count III

(1) That on or about the 6th day of March, 1932, and in accordance with the provisions of the Revenue Act of 1928, claimant filed with the Collector of Internal Revenue (hereinafter referred to as Collector) in and for the District of Washington its income tax return for the calendar year 1931 in which its net income subject to tax for said year was reported as $34,927.40, and an income tax was shown to be due thereon in the sum of $4,191.29.

(2) That the income tax shown to be due on claimant's said return was paid to said Collector on the dates and in the amounts as follows, to wit:

Date	Amount
March 7, 1932	$1,047.83
June 14, 1932	1,047.83
Sept. 14, 1932	1,047.83
Dec. 14, 1932	1,047.80

[fol. 10] (3) That subsequent thereto the Commissioner of Internal Revenue (hereinafter referred to as Commissioner) through his duly authorized representatives made an examination of said return, and as a result thereof the

Commissioner on July 18, 1933 redetermined the claimant's net income to be $66,222.71, and on or about October 1, 1933 assessed against the claimant an additional tax thereon for said year 1931 in the amount of $3,755.44; that said additional tax on $3,755.44, together with interest thereon in the amount of $347.25, was paid under protest by the claimant to said Collector on or about October 11, 1933.

(4) That among other deductions taken by claimant in its said return, claimant deducted as investment expenses the amount of $64,943.14; that on the examination of claimant's said return as aforesaid, the Commissioner disallowed as a deduction $24,124.61 of said investment expenses of $64,943.14 deducted by the claimant; that the Commissioner allowed a deduction of $3,923.11 for investment expenses, which claimant in its return deducted as other real estate expenses; that the Commissioner disallowed said amount of $3,923.11 as a deduction for other real estate expenses; that the Commissioner also disallowed other deductions for said year, viz., $1,759.99 representing 4 per cent of the mean of reserve funds and $4,275.00, representing depreciation; that the Commissioner excluded from the net income reported by claimant in its return the sum of $4.00 representing dividends of domestic corporations; that said adjustments resulted in the Commissioner's increasing claimant's net income for said year from $34,927.40, the amount reported by claimant, to $66,222.71 as aforesaid.

(5) That on or about the 12th day of October, 1933 and in accordance with the provisions of law and the Regula- [fol. 11] tions of the Secretary of the Treasury promulgated in pursuance thereof, the claimant duly filed with said Collector a claim for refund of income taxes overpaid for said year 1931 in the amount of $3,619.16 together with interest thereon, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow as deduction from gross income the following items:

Investment expenses in the amount of $24,124.61 within the meaning of Section 203 (a) (5) of the Revenue Act of 1928.

Depreciation in the amount of $4,275.10 within the meaning of Section 203 (a) (7) of the Revenue Act of 1928.

4% of the mean of reserve funds in the amount of $1,759.99 within the meaning of Section 203 (a) (2) of the Revenue Act of 1928.

(6) That on or about the 9th day of October, 1935, in accordance with the provisions of law in that regard and the Regulations of the Secretary of Treasury promulgated in pursuance thereof, claimant duly filed with said Collector a second claim for refund of income taxes overpaid for said year 1931 in the amount of $1,333.24 together with interest thereon, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow any deduction from gross income for depreciation in the amount of $11,-110.36, which claimant sustained on farm buildings during the taxable year 1931, within the meaning of Section 203 (a) (7) of the Revenue Act of 1928.

(7) That the Commissioner rejected the claimant's said claim for refund of $3,619.16 in its entirety, and notified the [fol. 12] claimant of such rejection by registered mail on October 25, 1935; that the Commissioner rejected the claimant's said claim for refund of $1,333.24 in its entirety, and notified claimant of such rejection by registered mail on January 19, 1937.

(8) That the correct taxable net income of claimant for the calendar year 1931 was $36,422.84, computed by deducting from the net income of $66,222.71, as redetermined by the Commissioner, $24,124.61 representing investment expenses within the meaning of Section 203(a) (5) of the Revenue Act of 1928, which the Commissioner illegally disallowed, depreciation of $3,675.26 sustained by the claimant on farm buildings within the meaning of Section 203 (a) (7) of the Revenue Act of 1928, which the Commissioner illegally disallowed, and $2,000.00 representing nontaxable income within the meaning of Section 22 (b) (4) of the Revenue Act of 1928, which the Commissioner illegally included in claimant's taxable net income; that the correct income tax payable by claimant for said year 1931 was $4,370.74; that the assessment and collection of an income tax for said year 1931 in excess of $4,370.74 was illegal and void; that the amount of income tax overpaid by the claimant for said year 1931 was $3,575.99; that the amount of interest overpaid by the claimant on said additional assessment of income taxes amounting to $3,755.44 for said

year 1931 was $330.78; that the Commissioner's action in failing and refusing to allow claimant's said claims for refund in the total amount of $3,906.77 (comprised of said overpayment of income taxes of $3,575.99 and said overpayment of interest of $330.78) together with interest on said amounts at the rate of 6 per cent per annum from the respective dates of payment thereof, was illegal and without [fol. 13] any warrant or authority in law; that there is now justly due and owing to the claimant by the United States the sum of $3,906.77 with interest at the rate of 6 per cent per annum computed from the respective dates of payment of said sum of $3,906.77 as follows:

From October 11, 1933 on $3,575.99 taxes overpaid on said date;
From October 11, 1933 on $330.78 interest overpaid on said date;

and that claimant is justly entitled to recover said amounts from the United States after allowing all just credits and offsets.

(9) That no action upon claimant's foregoing applications for refund has been had before Congress or either House thereof, or any of the departments of the Government other than the Treasury Department, or in any other Court; that claimant has fully set forth in its petition the claims and the action thereon by the Treasury Department; that claimant is the sole owner thereof, and the only party interested therein, and that no assignment or transfer of the said claim or any part thereof, or any interest therein has been made; that claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way aided, abetted or given any encouragement or comfort to any persons or government in rebellion against the Government of the United States or at any time aided or abetted or in any way given comfort to any sovereign or government that is or ever has been at war with the United States.

Wherefore, claimant prays for judgment against the United States on its third cause of action for the sum of $3,906.77 with interest at the rate of 6 per cent per annum [fol. 14] computed from the respective dates of payment of said sum of $3,906.77 as follows:

From October 11, 1933 on $3,575.99 taxes overpaid on said date;

From October 11, 1933 on $330.78 interest overpaid on said date;

and for such other and further relief as to this Court may seem just and equitable in the premises.

Count IV

(1) That on or about the 15th day of March, 1933, and in accordance with the provisions of the Revenue Act of 1932, claimant filed with the Collector of Internal Revenue (hereinafter referred to as Collector) in and for the District of Washington its income tax return for the calendar year 1932 in which its net income subject to tax for said year was reported as $10,256.82, and an income tax was shown to be due thereon in the sum of $1,410.31.

(2) That the income tax shown to be due on claimant's said return was paid to said Collector on the dates and in the amounts as follows, to wit:

Date	Amount
March 15, 1933	$352.58
June 10, 1933	352.58
September 8, 1933	352.58
November 29, 1933	352.57

(3) That subsequent thereto the Commissioner of Internal Revenue (hereinafter referred to as Commissioner) through his duly authorized representatives made an examination of said return, and as a result thereof the Commissioner on December 12, 1934 redetermined the claimant's net income for said year 1932 to be $43,998.62, and on or about January 16, 1935 assessed against the claimant an additional tax thereon for the calendar year 1932 in the [fol. 15] amount of $744.17; that said additional tax of $744.17, together with interest thereon in the amount of $81.43 was paid under protest by the claimant to said Collector on or about January 18, 1935; that on or about February 6, 1935, the Commissioner assessed against the claimant an additional tax thereon for the calendar year 1932 in the amount of $30.00; that said additional tax of $30.00 together with interest thereon in the amount of $3.28 was

paid under protest by the claimant to said Collector on or about February 8, 1935; that on or about June 12, 1935, the Commissioner assessed against the claimant an additional tax thereon for said year in the amount of $3,865.33; that said additional tax of $3,865.33, together with interest thereon in the amount of $521.55, was paid under protest by the claimant to said Collector on or about June 22, 1935.

(4) That among other deductions taken by claimant in its said return for 1932, claimant deducted as investment expenses the amount of $63,502.01; that on the examination of claimant's said return as aforesaid, the Commissioner disallowed as a deduction $26,634.31 of said investment expenses of $63,502.01 deducted by the claimant; that the Commissioner allowed a deduction of $4,850.75 for investment expenses which claimant in its return deducted as other real estate expenses; that the Commissioner disallowed said amount of $4,850.75 as a deduction for other real estate expenses; that the Commissioner also disallowed other deductions for said year, viz., $1,463.00, representing 4 per cent of the mean of reserve funds and $5,630.36 representing depreciation; that the Commissioner reduced the exempt interest reported by claimant in its said return in the amount of $14.13, and added said amount to the claimant's taxable net income for said year; that said adjustments [fol. 16] resulted in the Commissioner's increasing claimant's net income for said year from $10,256.82 to $43,998.62 as aforesaid.

(5) That on or about the 22nd day of June, 1935 and in accordance with the provisions of law in that regard and the Regulations of the Secretary of Treasury promulgated in pursuance thereof, claimant duly filed with said Collector a claim for refund of income taxes overpaid for said year 1932 in the amount of $3,662.22 together with interest, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow as a deduction from gross income investment expenses in the amount of $26,634.31, within the meaning of Section 203(a)(5) of the Revenue Act of 1932.

(6) That on or about the 29th day of October, 1935, in accordance with the provisions of law in that regard and the Regulations of the Secretary of Treasury promulgated in pursuance thereof, claimant duly filed with said Collector

a second claim for refund of income taxes overpaid for said year 1932 in the amount of $1,728.62 together with interest thereon, basing said claim upon the ground that the Commissioner in redetermining the taxable net income of the claimant for said year failed to allow any deduction from gross income for depreciation in the amount of $12,571.82, which claimant sustained on farm buildings during the taxable year 1932, within the meaning of Section 203(a)(7) of the Revenue Act of 1932.

(7) That the Commissioner rejected the claimant's said claim for refund of $3,662.22 in its entirety, and notified the claimant of such rejection by registered mail on November 26, 1935; that the Commissioner rejected the claimant's said claim for refund of $1,728.62 in its entirety and notified [fol. 17] claimant of such rejection by registered mail on January 19, 1937.

(8) That the correct taxable net income of claimant for the calendar year 1932 was $10,453.95 computed by deducting from the net income of $43,998.62, as determined by the Commissioner, $26,634.31 representing investment expenses which the Commissioner illegally disallowed, depreciation of $5,272.06 sustained by claimant on farm buildings which the Commissioner illegally disallowed, and $1,638.30 representing interest paid by claimant on supplementary contracts not involving life contingencies which the Commissioner illegally disallowed; that the correct income tax payable by claimant for said year 1932 was $1,437.42; that the assessment and collection of an income tax for said year 1932 in excess of $1,437.42 was illegal and void; that the amount of income tax overpaid by the claimant for said year 1932 was $4,612.39; that the amount of interest overpaid by the claimant on said additional assessment of income taxes amounting to $4,639.50 for said year 1932 was $604.88; that the Commissioner's action in failing and refusing to allow petitioner's said claims for refund in the total amount of $5,217.27 (comprised of said overpayment of income taxes of $4,612.39 and said overpayment of interest of $604.88) together with interest on said amount at the rate of 6 per cent per annum from the respective dates of payment thereof, was illegal and without any warrant or authority in law; that there is now justly due and owing to the claimant by the United States the sum of $5,217.27 with interest

at the rate of 6 per cent per annum computed from the respective dates of payment of said sum of $5,217.27 as follows:

From January 18, 1935 on $717.06 taxes overpaid on said date;
[fol. 18] From January 18, 1935 on $79.95 interest overpaid on said date;
From February 8, 1935 on $30.00 taxes overpaid on said date;
From February 8, 1935 on $3.28 interest overpaid on said date;
From June 22, 1935 on $3,865.33 taxes overpaid on said date;
From June 22, 1935 on $521.55 interest overpaid on said date;

that claimant is justly entitled to recover said amount from the United States after allowing all just credits and offsets.

(9) That no action upon claimant's foregoing application for refund has been had before Congress or either House thereof, or any of the departments of the Government other than the Treasury Department, or in any other Court; that claimant has fully set forth in its petition the claim and the action thereon by the Treasury Department; that claimant is the sole owner thereof, and the only party interested therein, and that no assignment or transfer of the said claim or any part thereof, or any interest therein has been made; that claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way aided, abetted or given any encouragement or comfort to any persons or government in rebellion against the Government of the United States or at any time aided or abetted or in any way given comfort to any sovereign or government that is or ever has been at war with the United States.

Wherefore, claimant prays for judgment against the United States on its fourth cause of action for the sum of $5,217.27 with interest thereon at the rate of 6 per cent com-
[fol. 19] puted from the respective dates of payment of said sum as follows:

From January 18, 1935 on $717.06 taxes overpaid on said date;

From January 18, 1935 on $79.95 interest overpaid on said date;
From February 8, 1935 on $30.00 taxes overpaid on said date;
From February 8, 1935 on $3.28 interest overpaid on said date;
From June 22, 1935 on $3,865.33 taxes overpaid on said date;
From June 22, 1935 on $521.55 interest overpaid on said date;

and for such other and further relief as to this Court may seem just and equitable in the premises.

Wherefore, and in view of all the above and foregoing, claimant prays for judgment against the defendant on its first cause of action for the sum of, to-wit: $1,575.23 with interest at the rate of 6 per cent per annum, as follows:

From March 21, 1932 on $1,408.82 taxes overpaid on said date;
From March 21, 1932 on $166.41 interest overpaid on said date;

on its second cause of action for the sum of, to-wit: $2,904.66 with interest at the rate of 6 per cent per annum, as follows:

From April 22, 1932 on $2,579.06 taxes overpaid on said date;
From April 22, 1932 on $325.60 interest overpaid on said date;

on its third cause of action for the sum of, to-wit: $3,906.77 with interest at the rate of 6 per cent per annum as follows:

[fol. 20] From October 11, 1933 on $3,575.99 taxes overpaid on said date;
From October 11, 1933 on $330.78 interest overpaid on said date;

on its fourth cause of action for the sum of, to-wit: $5,217.27 with interest at the rate of 6 per cent per annum, as follows:

From January 18, 1935 on $717.06 taxes overpaid on said date;
From January 18, 1935 on $79.95 interest overpaid on said date;

From February 8, 1935 on $30.00 taxes overpaid on said date;

From February 8, 1935 on $3.28 interest overpaid on said date;

From June 22, 1935 on $3,865.33 taxes overpaid on said date;

From June 22, 1935 on $521.55 interest overpaid on said date;

and for such other and further relief as to this Honorable Court may seem just and equitable in the premises.

Walter E. Barton, Counsel for Claimant.

[fol. 21] *Duly sworn to by Russell C. Burton. Jurat omitted in printing.*

[fol. 22] II. General Traverse—Filed June 8, 1937

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

James W. Morris, Assistant Attorney General.

III. Argument and Submission of Case

On January 9, 1939, argument of the case on merits was begun by Mr. Walter E. Barton, for plaintiff. On January 10, 1939, was heard further for plaintiff. Mr. Guy Patten and Mr. Edward H. Horton, were heard for the defendant, and the case was submitted.

[fol. 23] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**—Filed March 6, 1939

Mr. Walter E. Barton for the plaintiff.

Mr. Guy Patten, with whom was Mr. Assistant Attorney General James W. Morris, for the defendant.

Mr. Fred K. Dyar and Mr. Robert Anderson were on the brief.

Plaintiff seeks to recover $13,603.83, of which $12,176.26 represents alleged overpayments of income tax for 1929 to 1932, inclusive, and $1,427.57 represents alleged overpayment of interest on additional taxes collected for those years.

The two questions presented are (1) whether the apportionment by plaintiff, a life insurance company, to its investment expenses of a percentage of the salaries paid to its general officers and cashiers for services performed and to be performed by them in all departments of its business constitutes an assignment or inclusion of "general expenses in part to investment expenses" within the meaning of section 203 (a) (5) of the Revenue Acts of 1928 and 1932; and (2) whether, in determining the deduction from gross income of the specified percentage of the mean of the reserves at the beginning and end of each taxable year, plaintiff is entitled under sections 201 (a) and 203 (a) (2) of the revenue acts above mentioned to include as a part of the "reserve funds required by law" its reserves for Total [fol. 24] and Permanent Disability Benefits under policies of Health and Accident Insurance for 1929 to 1932.

Special Findings of Fact

1. Plaintiff is a Stock Life Insurance Company, organized and existing under the laws of the State of Washington with its principal offices in Seattle. During 1929 to 1932, inclusive, and prior thereto, plaintiff was engaged in the business of issuing and selling life insurance in Washington and other states of the United States. It writes non-participating policies of life insurance on the level-premium plan, the mean of the reserve funds of which, held for the fulfillment of such life insurance contracts for the years involved herein, was as follows:

1929	$6,761,711.16
1930	7,400,545.31
1931	7,892,137.96
1932	8,117,372.90

Among the policies of life insurance issued by plaintiff, and which it had outstanding during 1929 to 1932, inclusive, were certain life insurance policies which contained additional provisions for Total and Permanent Disability Benefits and/or Accidental Death Benefits, the mean of the

reserve funds of which, held for the fulfillment of such disability and accidental death benefit contract, was as follows:

1929	$149,687.89
1930	195,305.12
1931	201,889.46
1932	230,886.50

Plaintiff issues separate life policies, but issues no separate policies covering disability benefits and/or accidental death benefits. Its life insurance contracts of combined life, health, and accident insurance constitute all the classes of insurance issued by it.

2. Plaintiff filed income-tax returns for 1929 to 1932, inclusive. Its return for 1929 disclosed a net income of $50,622.99, and a tax of $5,568.53 which it paid in the amounts of $1,392.14 on February 25, 1930, and $4,176.39 [fol. 25] on June 12, 1930. Thereafter the Commissioner of Internal Revenue assessed an additional tax for that year of $1,408.82 which was paid March 21, 1932, together with interest thereon of $166.41.

3. In its return for 1929 plaintiff deducted from gross income as investment expenses the sum of $51,134.56, of which $17,149.92 consisted of the following items:

50% of its president's salary	$9,000.00
80% of its treasurer's salary	6,799.92
75% of its general counsel's salary	1,350.00
Total	$17,149.92

In his final determination for 1929, the Commissioner, among other adjustments,

(a) Allowed plaintiff an additional deduction for investment expenses of $4,745.65, which it had not taken in its return and which is not in dispute in this case;

(b) Disallowed the above items aggregating $17,149.92 as deductions on account of investment expenses, which plaintiff claims it is entitled to in this case;

(c) Allowed a deduction of 4 per centum of the mean of reserves for Total and Permanent Disability Benefits, which the defendant claims are not allowable deductions as re-

serves required by law within the meaning of the Tax Act in the case of a Life Insurance Company. Four percent of the mean of such disability reserves so allowed is:

For active lives	$3,142.51
For disabled lives	2,439.77
Total	$5,582.28

4. One-fourth of 1 per centum of the mean of plaintiff's invested assets for 1929 is $21,465.27.

5. Plaintiff's return for 1930 disclosed a net income of $59,839.94, and a tax of $7,180.79 which it paid in three installments of $1,795.20 each on February 11, June 11, and August 29, 1931, and of $1,795.19 on December 1, 1931. Thereafter the Commissioner assessed an additional tax for this year of $3,115.89 which plaintiff paid April 22, 1933, together with interest thereon of $386.20.

[fol. 26] 6. In its return for 1930, plaintiff deducted from gross income as investment expenses the sum of $62,690.06, of which amount $21,492.21 consisted of the following items:

50% of its president's salary	$9,000.00
80% of its treasurer's salary	7,899.92
75% of its general counsel's salary	1,350.00
25% of its cashier's salary (Seattle District)	580.16
50% of its cashier's salary (Oakland District)	770.00
25% of its cashier's salary (Portland District)	180.00
50% of its cashier's salary (Los Angeles District)	1,607.50
50% of cost of its president's bond 80% of cost of its treasurer's bond 25% of cost of its cashiers' bonds	104.63
Total	$21,492.21

In his final determination for this year, the Commissioner, among other adjustments,

(a) Disallowed the above items aggregating $21,492.21 as deductions on account of investment expenses, which plaintiff claims it is entitled to in this case;

(b) Allowed a deduction of 4 per centum of the mean of reserves for total and permanent disability benefits, which the defendant claims are not allowable deductions as re-

serves required by law, within the meaning of the Tax Act in the case of a Life Insurance Company. Four percent of the mean of such disability reserves so allowed is:

For active lives	$2,634.84
For disabled lives	3,817.28
Total	$6,452.12

7. One-fourth of 1 per centum of the mean of plaintiff's invested assets for 1930 is $23,243.10.

8. Plaintiff's return for 1931 disclosed a net income of $34,927.40, and a tax of $4,191.29, which it paid in three installments of $1,047.83 each on March 7, June 14, and September 14, 1932, and $1,047.80 on December 14, 1932. Thereafter the Commissioner assessed an additional tax for this year of $3,755.44 which plaintiff paid October 11, 1933, together with interest thereon of $347.25.

9. In its return for 1931, plaintiff deducted from gross income, as investment expenses, the sum of $64,943.14, of which $24,124.61 consisted of the following items:

[fol. 27] 50% of its president's salary	$9,000.00
80% of its treasurer's salary	7,999.92
75% of its general counsel's salary	2,193.75
50% of its cashier's salary (Spokane District)	1,660.00
25% of its cashier's salary (Seattle District	346.32
50% of its cashier's salary (Oakland District)	872.50
25% of its cashier's salary (Portland District)	332.50
50% of its cashier's salary (Los Angeles District)	1,600.00
50% of cost of its president's bond 80% of cost of its treasurer's bond 50% of cost of its cashiers' bonds (Oakland, Spokane, Los Angeles, and San Diego Districts) 25% of cost of its cashiers' bonds (Seattle, Portland Districts)	119.62
Total	24,124.61

In his final determination for 1931, the Commissioner, among other adjustments,

(a) Disallowed the above items aggregating $24,124.61 as deductions on account of investment expenses which plaintiff claims it is entitled to in this case:

(b) Disallowed other deductions as follows:

(1) 4% of mean of reserves overstated on account of supplementary contracts, disability benefits, and policies upon which a surrender value may be demanded	$7,653.79
(2) Investment expenses on the ground that they were capital expenditures	3,923.11
(3) Real estate expenses on the ground that they were capital expenditures	1,005.72
Total	12,582.62

The above disallowed deductions are not in dispute in this case, except that included in the above item of $7,653.79 is an item of $4,937.58 representing four per centum of the mean of reserves held by plaintiff on account of disability benefits, disabled lives, which the Commissioner disallowed as a deduction and which the plaintiff claims it is entitled to in this case.

(c) Allowed a deduction of 4 per centum of the mean of reserves for Total and Permanent Disability Benefits, Active Lives, amounting to $2,743.76, which the defendant claims is not an allowable deduction as reserves required by law within the meaning of the Tax Act in the case of a Life Insurance Company;

[fol. 28] (d) Allowed the following additional deductions from gross income:

(1) Depreciation on farm buildings	$3,675.26
(2) Interest paid on supplementary contracts	2,000.00
Total	5,675.26

The foregoing additional deductions allowed by the Commissioner are not in dispute in this case.

10. One-fourth of 1 per centum of the mean of plaintiff's invested assets for 1931 is $24,513.65.

11. Plaintiff's return for 1932 disclosed a net income of $10,256.82, and a tax of $1,410.31 which it paid in three installments of $352.58 on March 15, June 10, and September 8, 1933, and $352.57 on November 29, 1933. Thereafter the Commissioner assessed additional taxes for this year, which it paid, with interest, as follows:

		Interest
January 18, 1935	$744.17	$81.43
February 8, 1935	30.00	3.28
June 22, 1935	3,865.33	521.55

12. In its return for 1932 plaintiff deducted from gross income as investment expenses the sum of $63,502.01, of which $26,634.31 consisted of the following items:

50% of its president's salary	$9,000.00
80% of its treasurer's salary	7,999.92
75% of its general counsel's salary	4,214.51
50% of its cashier's salary (Spokane District)	1,990.00
25% of its cashier's salary (Seattle District)	302.50
50% of its cashier's salary (Oakland District)	1,120.00
25% of its cashier's salary (Portland District)	332.50
50% of its cashier's salary (Los Angeles District)	1,600.00
Total	26,559.43
80% of cost of its treasurer's bond 50% of cost of its cashiers' bonds (Oakland, Los Angeles, and Spokane Districts) 25% of cost of its cashiers' bonds (Seattle and Portland Districts)	74.88
Grand total	26,634.31

[fol. 29] In his final determination for this year, the Commissioner, among other adjustments,

(a) Disallowed the above items aggregating $26,634.31 as deductions on account of investment expenses, which plaintiff claims it is entitled to in this case;

(b) Disallowed other deductions, as follows:

(1) 3¾ per centum of the mean of reserves overstated on account of supplementary con-

tracts, disability benefits, and policies upon which a surrender value may be demanded	$7,546.62
(2) Investment expenses on the ground that they were capital expenditures	4,850.75
(3) Real estate expenses on the ground that they were capital expenditures	4,519.76
Total	$16,917.13

The above disallowed deductions are not in dispute in this case, except that included in the above item of $7,546.62 is an item of $4,920.24 representing 3¾ per centum of the mean of reserves held by plaintiff on account of Disability Benefits, Disabled Lives, which the Commissioner disallowed as a deduction and which the plaintiff claims it is entitled to in this case.

(c) Allowed a deduction of 3¾ per centum of the mean of reserves for Total and Permanent Disability Benefits, Active Lives, amounting to $3,402.21, which the defendant claims is not an allowable deduction as reserves required by law within the meaning of the Tax Act in the case of a Life Insurance Company;

(d) Allowed the following additional deductions from gross income:

(1) Depreciation on farm buildings	$5,272.06
(2) Interest paid on supplementary contracts	1,638.30
Total	$6,910.36

The foregoing additional deductions allowed by the Commissioner are not in dispute in this case.

13. One-fourth of 1 per centum of the mean of plaintiff's invested assets for 1932 is $24,872.81.

14. There are in evidence, as a part of the stipulation of facts, copies of the Commissioner's letters of final determination of plaintiff's tax liabilities for the years 1929 and 1930; also a copy of the Commissioner's letter of final determination of plaintiff's tax liabilities for 1931 and 1932. [fol. 30] These letters of final determination are made a part hereof by reference.

15. November 22, 1929, the Board of Directors of the plaintiff passed the following resolution, which was not modified or rescinded prior to the end of the taxable year 1932:

That in connection with office salaries paid, the Company's disbursements for such purposes during the year 1929 and in succeeding years, until by proper Board Resolution the ratios herein shall be changed, shall be charged as between Investment and Insurance expense in the following proportions:

Name	Investment	Insurance
John J. Cadigan (President)	50%	50%
Edward J. O'Shea (Treasurer)	80%	20%
Graves, Mizer & Graves (General Counsel)	75%	25%
R. L. McGinnis	100%	
F. W. Maddux	100%	
Cashier in Seattle Office	25%	75%
Cashier in Oakland Office	50%	50%
Cashier in Portland Office	25%	75%
Cashier in Los Angeles Office	50%	50%
Cashier in San Diego Office	25%	75%
All employees in home office Investment Department	100%	
All employees in home office Policy Loan Department	100%	

The salaries paid by plaintiff to the officers and cashiers named during the taxable years involved were as follows:

	1929.	1930.	1931.	1932.
President	$18,000.00	$18,000.00	$18,000.00	$18,000.00
Treasurer	8,500.00	9,875.00	10,000.00	10,000.00
General Counsel	1,800.00	1,800.00	3,112.50	5,619.08
Seattle Cashier		2,320.64	1,325.28	1,210.00
Oakland Cashier		1,540.00	1,750.00	2,240.00
Portland Cashier		720.00	1,330.00	1,330.00
Los Angeles Cashier		3,215.00	3,200.00	3,200.00
Spokane Cashier			3,200.00	3,980.00

The salaries of these officers and cashiers of plaintiff were for all services rendered by them, and the services performed and expected to be performed by such officers and cashiers related to matters in all departments of plaintiff's business, that is, in both the investment and underwriting departments.

[fol. 31] Plaintiff charged to its investment department and deducted as investment expenses in its income tax returns for 1929 to 1932, inclusive, amounts equal to the same percentages of the total salaries paid to its officers and employees, which quoted resolution provided should be charged as investment expenses. The amounts of the deductions are set out in findings 3, 6, 9, and 12.

16. The percentages of the salaries of the officers of plaintiff, which the resolution directed to be charged to the investment department, represent estimates arrived at by such officers based upon a careful consideration of the duties theretofore performed by them and which they estimated would be performed in the future. The respective general officers and employees mentioned in the resolution of November 22, 1929, devoted at least as much of their time to the investment department of the plaintiff's business for the respective years involved herein as the percentages set out in the resolution.

17. The percentages of the salaries of the cashiers, which the resolution directed to be charged to the investment department, represent estimates arrived at by the supervising officers in charge of such cashiers based upon a careful consideration of the duties theretofore performed by the cashiers and which they estimated would be performed in the future. It is stipulated that, if called upon, the respective supervising officers of cashiers would testify under oath that the cashiers devoted at least as much of their time to the investment branch of plaintiff's business for the respective years involved as the percentages set out in the foregoing resolution. There is in evidence as a part of the stipulation of facts a statement showing the cash transactions by plaintiff's branch offices in the underwriting and investment departments, respectively, for 1931 and 1932. This statement is made a part hereof by reference. The approximate percentages of cash transactions relating to the underwriting and investment departments for 1931 and 1932, as shown in this statement, apply to the year 1930.

18. Plaintiff issues various standard forms of life insurance policies, such as Straight Life, Twenty Payment Life, Endowment, etc., some of which also include provisions for [fol. 32] total and permanent disability benefits and accidental death benefits. On each policy covering combined

life, health, and accident insurance, the total premium shown on the face of such policy includes: (1) the premium paid for the life-insurance coverage; (2) the premium paid for the total and permanent disability insurance coverage; and (3) the premium paid for the accident insurance coverage. The premium paid for the total and permanent disability coverage and the premium paid for the accident insurance coverage are stated separately elsewhere in the policy.

The terms of such policy are—

(1) The cancellation or the termination of the life insurance automatically cancels or terminates the disability and/or the accident insurance.

(2) The policyholder may discontinue the disability and/or the accident insurance at any premium-paying date without canceling the life insurance and without affecting the life insurance premium. In such event, the total premium shown on the face of the policy would be reduced by the amount of the premium for disability insurance and/or the amount of the premium for accident insurance specified in the policy.

(3) The disability and accident benefits are not included in any paid-up term insurance, or other paid-up benefits granted upon the surrender or lapse of the policy; nor does any reserve held on account thereof enter into the amount of the reserve held on account of the life insurance covered by the policy, or the surrender, cash, or loan value shown in the "Table of Loan and Nonforfeiture Values."

19. A sample combined life, health, and accident insurance policy issued on May 1, 1932, to John Doe, at age 35, for $1,000, the same being nonparticipating, endowment at age 85, premiums payable for 20 years, and containing total and permanent disability and accidental death benefits, is in evidence as stipulation Exhibit D and is made a part hereof by reference. The total annual premium for the combined life, health, and accident insurance is $36.30 as shown on the first page of said sample policy. The annual premium for total and permanent disability benefits is $4.31, and the annual premium for accidental death benefits is $2.00 as shown on page 6 of such sample policy. Page 6 thereof also [fol. 33] contains the usual provisions pertaining to total and permanent disability benefits and accidental death benefits, respectively.

20. Plaintiff issues its life insurance contracts and its combined life and disability insurance contracts on what is commonly known as the level premium plan; that is, the insured pays during the early years an annual premium in excess of the current cost of such insurance. The excess amount of such premium is devoted to the creation of a reserve, which, with accumulated interest at the assumed rate, enables such insurance to be maintained in later years, when the stipulated level premium would be insufficient to meet the current cost of such insurance on the level premium plan. The plaintiff creates and maintains a reserve out of the premiums received for the life insurance coverage, and also creates and maintains a separate reserve out of the premiums received for the total and permanent disability benefits coverage, as hereinafter referred to.

21. In respect of any policy in force which also provided for disability and/or accidental death benefits, plaintiff at all times set up and maintained a life reserve in the same manner as if the policy had been issued without such disability and/or accidental death provisions. For 1929 to 1932, inclusive, plaintiff's outstanding assurance obligations applicable to life insurance were valued upon the basis of the American Experience Table of Mortality, with interest at 3½ per centum, as required by the laws of the State of Washington, and the rules and regulations of the Insurance Commissioner of said State, and also as required by the laws of other states in which plaintiff did business, and it maintained reserves therefor as thus calculated. Plaintiff deducted 4 per centum of the mean of such reserve funds held by it at the beginning and end of the taxable years 1929, 1930, and 1931, and 3¾ per centum of the mean of such reserves held by it at the beginning and end of the taxable year 1932. The Commissioner allowed these deductions for the respective years above mentioned, and there is no controversy in this suit with respect thereto. Reserves for accidental death benefits are not in controversy in this case.

[fol. 34] 22. In respect of any combined life, health, and accident insurance policies in force, in addition to its reserves with respect to the life insurance coverage, plaintiff for 1929 to 1932, inclusive, set up and maintained, out of the total and permanent disability premiums, reserves with respect to the total and permanent disability benefits covered

by said policies, computed as hereinafter stated, and commonly known as Reserve for Total and Permanent Disability Benefits, Active Lives.

In calculating the amount of the premium charged for such total and permanent disability insurance, the following factors are taken into consideration: (1) the rate of disability, (2) the rate of mortality, (3) the rate of interest, and (4) the rate of expense. The first three, the rate of disability, the rate of mortality, and the rate of interest, determine the amount of the net disability premium.

The net disability premium is that amount which (in connection with a given number of lives) will be exactly sufficient to pay all disability claims of the group, provided deaths take place and disability occurs according to the adopted combined mortality and disability table (usually Hunter's Combined Table of Mortality and Disability) and the net disability premiums are invested immediately at the rate of interest assumed (usually 3 per centum to 3½ per centum compound interest).

The fourth element, namely, expense or loading, is the amount added to the net disability premium necessary to take care of the underwriting expenses of the company, such as agents' commissions, cost of collecting premiums, settlement of disability claims, overhead expenses pertaining to underwriting, etc., with respect to the total and permanent disability coverage in the policies, and which are not reflected in the basic assumptions as to disability, mortality, and interest.

For a given number of lives, each of the same age at the beginning of any year, in determining the rate of disability for the group or for a unit thereof, there must be taken into consideration at least four elements:

1. The number of persons who would be ineligible or incapable of securing disability insurance;

[fol. 35] 2. The number who might obtain disability insurance, but die before becoming totally and permanently disabled;

3. The number who might obtain disability insurance and become totally or permanently disabled and live to receive disability benefits during the entire period of their expectancy;

4. The number who might obtain disability insurance and become totally and permanently disabled but who might die or recover prior to the expiration of their expectancy.

23. For the taxable years 1929 to 1932, inclusive, plaintiff credited to its Reserve for Total and Permanent Disability Benefits, Active Lives, the necessary portion of the net disability premiums charged for disability coverage. This reserve relates to outstanding disability insurance in force on which total and permanent disability has not occurred. The following gives the mean of plaintiff's Reserves for Total and Permanent Disability Benefits, Active Lives, held at the beginning and end of the taxable years involved:

1929	$78,562.76
1930	65,871.14
1931	68,593.97
1932	90,725.50

Plaintiff's Reserve for Total and Permanent Disability Benefits, Active Lives, was computed in accordance with standard combined mortality and disability tables with interest rates as required by the law of the State of Washington and/or by the rules and regulations of the Insurance Commissioner of said State, and also as required by the laws of other states in which plaintiff did business. The plaintiff deducted 4 per centum of the mean of such Reserves for Total and Permanent Diability Benefits, Active Lives, held by it at the beginning and end of the taxable years 1929 to 1931, inclusive, and 3¾ per centum of the mean of such Reserve for Total and Permanent Disability Benefits, Active Lives, held by it at the beginning and end of the taxable year 1932. The amounts of these deductions and the Commissioner's action with respect thereto are referred to in findings 3 (c), 6 (b), 9 (c), and 12 (c), respectively.

[fol. 36] 24. If, as, and when a person carrying disability insurance becomes totally and permanently disabled, plaintiff transfers a certain amount, computed in the manner hereinafter described, from the Reserve for Total and Permanent Disability Benefits, Active Lives, to another reserve commonly called Reserve for Total and Permanent Disability Benefits, Disabled Lives. The amount so transferred is calculated upon the basis of selected tables of probabilities of length of disability and expected benefits (such as Hunter's Disabled Lives Mortality Table), plus an as-

sumed rate of interest (usually 3½ per centum compound interest). The calculation also takes into consideration the mortality element. At the time of the happening of such contingency, it is not possible to determine definitely the amount of the disability benefits which the Company (plaintiff) shall be required to pay. This is due to the indefiniteness of the period during which the Company will be called upon to pay disability benefits, as the disability payments cease upon the death of such disabled person or upon the discontinuance of his disability.

25. The following gives the mean of plaintiff's Reserves for Total and Permanent Disability Benefits, Disabled Lives, held at the beginning and end of the taxable years involved:

1929	$60,994.28
1930	95,432.05
1931	123,439.49
1932	131,206.50

These Reserves for Total and Permanent Disability Benefits, Disabled Lives, were computed in accordance with standard combined mortality and disability tables for disabled lives, with interest rates as required by the law of the State of Washington, and/or the rules and regulations of the Insurance Commissioner of said State, and also as required by the laws of other states in which plaintiff did business and/or the rules and regulations of the Insurance Commissioners of said other states. Plaintiff deducted 4 per centum of the mean of the Reserves for Total and permanent Disability Benefits, Disabled Lives, held by it at the beginning and end of the taxable years 1929 to 1931, inclusive, and 3¾ per centum of the mean of the Reserves for [fol. 37] Total and Permanent Disability Benefits, Disabled Lives, held by it at the beginning and end of the taxable year 1932. The amounts of these deductions and the Commissioner's action with respect thereto are referred to in findings 3 (c), 6 (b), 9 (b), and 12 (b), respectively.

26. April 22, 1933, plaintiff filed its claims for 1929 and 1930, in which it asked for the refund of $1,894.89 and $3,196.89 for these years respectively, together with interest on the ground that it was entitled to the deduction from gross income of the amounts of $17,149.92 and $21,492.21 as investment expenses for the years, respectively,

in the computation of its income tax liabilities. These claims were rejected by the Commissioner on October 25, 1935.

27. October 12, 1933, plaintiff filed its claim in which it asked for the refund of $3,619.16, with interest, for 1931, upon the ground that it was entitled to a deduction from gross income of the amount of $24,124.61 as investment expenses, a deduction on account of depreciation in the amount of $4,275.10, and other deductions not material here.

October 9, 1935, plaintiff filed its claim in which it asked for the refund of $1,333.24 for 1931, with interest, upon the ground that it was entitled to a deduction of $11,110.36 on account of depreciation. The claim for refund for $3,619.16 was rejected October 25, 1935, and the claim for $1,333.24 was rejected January 19, 1937.

28. June 24, 1935, plaintiff filed its claim in which it asked the ground that it was entitled to a deduction from gross income of $26,634.31 as investment expenses.

October 29, 1935, plaintiff filed a claim in which it asked for the refund of $1,728.62, and interest, for 1932, upon the ground that it was entitled to a deduction of $12,571.82 on account of depreciation.

The Commissioner rejected the claim for $3,662.22 on November 26, 1935, and the claim for $1,728.62 on January 19, 1937.

29. In rejecting the refund claims for 1929, 1930, and 1931, the Commissioner held and determined as follows:

With respect to issue (3), that the allocation of salaries and counsel fees made in accordance with a resolution of [fol. 38] the Board of Trustees was a reasonable division of these expenditures; that they became a part of the investment expense, and that the limitation provided in section 203 (a) (5) of the Revenue Act of 1928 does not apply, the Bureau holds that the salaries of the president and treasurer and legal expenses of the company are expenses of a general nature that cover all branches of the business; therefore, an allocation of a portion of this general expense would necessitate the application of the limitation as provided in the section and Act referred to above.

In rejecting plaintiff's claim for refund for 1932, the Commissioner held and determined as follows:

Your claim is based on the contention that the allocation of salaries and counsel fees made in accordance with a resolution of the Board of Trustees was a reasonable division of these expenditures; that they became a part of the investment expense, and that the limitation provided in Section 203 (a) (5) of the Revenue Act of 1932 does not apply.

The Bureau holds that the salaries of the president and treasurer and legal expenses of the company are expenses of a general nature that cover all branches of the business; therefore, an allocation of a portion of this general expense would necessitate the application of the limitation as provided in the Section and Act referred to above.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment is rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

Opinion

Littleton, Judge, delivered the opinion of the court:

The first question involves a construction of section 203 (a) (5), Revenue Act of 1928, which relates to the deduction allowable to a life insurance company in respect of investment expenses. This section is in the following language: "In the case of a life insurance company the term [fol. 39] 'net income' means the gross income less * * * Investment expenses paid during the taxable year: Provided, That if any general expenses are in part assigned to or included in the investment expenses, the total deduction under this paragraph shall not exceed one-fourth of 1 per centum of the book value of the mean of the invested assets held at the beginning and end of a taxable year."

The gross income of a life insurance company consists only of "the gross amount of income received during the taxable year from interest, dividends, and rents," that is, investment income. Six specific deductions are allowed,

among which is the deduction here involved. Two additional deductions are conditionally allowed under sec. 203 (b). A specific exemption is provided. A life insurance company is not taxable upon its general income from premium receipts or on gain or profit from sale of property.

As shown by the findings, the plaintiff, by a resolution adopted in 1929, undertook to apportion the salaries paid to its general officers and certain general employees as between the underwriting and the investment departments of its business and to include as a direct investment expense an amount ranging from 25 per centum to 80 per centum of such salaries. The amounts so apportioned to and included in the investment expenses, together with all actual and direct investment expenses, were claimed as deductions from gross income for 1929 and subsequent years. The salaries of such officers and cashiers were for services performed and expected to be performed; and such services related to all departments of plaintiff's business, that is, to both the investment and underwriting departments. The percentages of such salaries which the resolution directed be charged to the investment department represented estimates arrived at by such officers, and in the case of the cashiers by estimates arrived at by the supervising officers in charge of such cashiers. The direct investment expenses, that is, the actual expenses about which there is no controversy, which were wholly incurred and paid in the investment department, exceeded an amount computed upon the basis of one-fourth of 1 per centum of the book value of the mean of plaintiff's invested assets.

The case of Sun Life Insurance Company of America v. United States, 81 C. Cls. 892, involved a deduction under [fol. 40] section 203 (a) (5). The question of the proper construction of this section and the extent of the deduction for investment expenses which a life insurance company may take thereunder has been reargued in this case. In the prior case of Sun Life Insurance Company, supra, the history, purpose, and meaning of the section in its relation to the special plan for the taxation of life insurance companies and the relation of the section to the business practices of such companies under the statutes of many states concerning investment expenses were not fully briefed and argued. In view of the facts here disclosed and also in view of important considerations bearing upon the proper interpretation of the section not heretofore considered and dis-

cussed by the court, which are now pressed upon our attention with an earnestness and fullness of argument which they have not heretofore received, we deem the occasion an appropriate one to re-examine the whole subject.

In its returns for each of the years involved, plaintiff deducted from gross income as investment expenses all amounts charged in the investment department representing direct and actual investment expenses wholly incurred and paid in that department, and, in addition, the amounts on account of officers' and cashiers' salaries apportioned to and included in investment expenses in accordance with the resolution. The Commissioner of Internal Revenue determined and allowed the expenses directly and entirely incurred and paid in the investment department, and, in asmuch as these actual investment expenses exceeded one-fourth of 1 per centum of the mean of the book value of plaintiff's invested assets at the beginning and end of each taxable year, he excluded and refused to allow as a part of the deduction that part of the salaries of general officers and cashiers assigned to and included in investment expenses.

Plaintiff contends that this action was contrary to the provisions of section 203 (a) (5), supra. It insists that when a taxpayer makes a determination or when it can submit evidence to show that a certain portion of the time of general officers or employees and a certain percentage of the salaries paid to them for services rendered in all departments of the business reasonably relate to services performed and expenses incurred in the maintenance and op-
[fol. 41] eration of the investment department of the business, such percentage of the total salaries paid may, under the section mentioned, be included in investment expenses and deducted without limitation from investment income for the reason that in such circumstances the portion so assigned to and included in the investment department becomes a direct and actual investment expense.

Plaintiff's position, in substance, is that the term "general expenses" as used in the statute refers specifically and only to those expenses which are not susceptible of division and allocation to the investment and underwriting departments and are incurred for and in behalf of both. We think this position does not take into consideration the fundamental distinction which exists in fact and is observed in the taxing statutes between general expenses and investment expenses. With respect to the former, a part thereof may

be susceptible of reasonable ascertainment and fairly chargeable against investment income and this was recognized and permitted by Congress, as shown by the Committee Reports, to the extent of one-fourth of 1 per centum of the book value of the mean of the invested assets. But, with respect to the latter, no question of division or allocation exists and Congress permitted them to be deducted without limitation. The first part of the section allowing the deduction of investment expenses paid and the proviso excluding all general expenses in excess of a specified amount are to be read and construed together. In view of facts and circumstances which now appear, we think the inclusion of the first without limit and the exclusion of the second in excess of the specified limitation cannot be regarded the same as the inclusion without limit of all of one and a part of the other. And we think also it is of no controlling importance that the officers of the corporation in their judgment make an allocation of general salaries between the Investment and Underwriting Departments. In the circumstances an interpretation which would permit this to be done would require an unauthorized interpolation. The fact that general expenses may be reasonably susceptible of apportionment does not take them out of the class of general expenses within the meaning of the proviso. When so ap- [fol. 42] portioned, either before or after they are incurred, the parts assigned are still impressed with the character of the services or matters in respect of which they are incurred.

We are therefore of opinion that the additional deductions here claimed cannot be sustained under the language and intent of section 203 (a) (5) when that section is considered in the light of the history and reasons for the adoption in 1921 of the special plan for taxing the limited income of life insurance companies. Prior to the enactment of the Revenue Act of 1921, approved November 21, 1921, life insurance companies were by definition included within the term "corporation" and were taxable as ordinary corporations, their gross income, including not only their investment income—that is, their income from interest, dividends and rents—but also their total premium receipts and all other gains and profits from sales of property.[1] This origi-

[1] Corporation Excise Tax Act of 1909, 36 Stat. 11, 112; Revenue Act of 1913, 38 Stat. 114, 172, 173; Revenue Act of 1916, 39 Stat. 756, 765-768; Revenue Act of 1918, 40 Stat. 1057, 1075-1079.

nal plan of taxation, through the inclusion of premium receipts and the allowance of all deductions generally allowed corporations and, in addition, policy claims accrued and paid, etc., was generally unsatisfactory and was productive of almost constant administrative controversy and litigation. As a result the life insurance companies, through the Association of Life Insurance Presidents, proposed to Congress a new plan for the taxation of life insurance companies in connection with the consideration by Congress of the Revenue Bill of 1918.[2] In a written document filed with the Ways and Means Committee at the time the Revenue Bill of 1918 was being considered, the Association of Life Insurance Presidents said, among other things: "Although only a minor proportion of the premiums received by the insurance companies constitutes true income, the greater part being the policyholders' contributions toward current losses and to permanent capital, the entire premium income is included in gross income under the Income Tax Law. This departure from principle is, however, rendered innocu- [fol. 43] ous through deductions expressly allowed by the statute." The plan submitted by the insurance companies proposed to place life insurance companies in a special class for the purpose of Federal taxation, and to change the basis of tax theretofore existing so as to include in gross income only the investment income of the companies consisting solely of interest, dividends, and rents, the deductions proposed in connection with this plan being expressly limited to those directly relating to the production of investment income.[3] The House did not adopt the proposed plan in the Revenue Bill of 1918. However, the Senate Finance Committee recommended in the 1918 Revenue Bill the plan proposed, which plan was later adopted and included as law in the Revenue Act of 1921. The amendment proposed by the insurance companies which was adopted and recommended to the Senate by the Finance Committee in the Revenue Bill of 1918, insofar as it related to the deduction from gross income for investment expenses, was as follows:

"Section 246. (a) That in the case of an insurance company taxable under section 245 the term 'net income' means the gross income less * * * (4) Investment expenses

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[2] Hearings before the Committee on Ways and Means, H. R. 12863, 65th Cong., 2d Sess., on the proposed Revenue Act of 1918, Pt. 1, p. 811.

[3] Senate Rep. 617, 65th Cong., 3rd Sess., p. 9.

during the taxable year not exceeding one-fourth of 1 per centum of the mean of the invested assets." In presenting the bill, Senator Simmons, chairman of the Finance Committee, stated that it had been framed after consultation with many representatives of the life insurance companies.[4]

The plan proposed for the taxation of life insurance companies was approved and adopted by the Senate, but was thereafter abandoned in conference.

The above limitation of one-fourth of 1 per centum, which had been proposed by the life insurance companies themselves, on the deduction "for investment expenses" was exactly the limitation which had long been in force and effect in the State of New York, as well as in various other states, under which life insurance companies in making their Annual Statements to the Insurance Departments of the various states had been limited by law to an arbitrary deduction for investment expenses not exceeding one-fourth [fol. 44] of 1 per centum of the mean of their invested assets. Section 33 of the Laws of New York (1906), ch. 326, which added section 97, provides as follows:

Limitation of Expenses, * * *. No such corporation (domestic life insurance corporation) shall make or incur any expense or permit any expense to be made or incurred upon its behalf or under any agreement with it, except actual investment expenses (not exceeding one-fourth of 1 per centum of the mean invested assets) * * *.

It will thus be seen that the provision with reference to the deduction for investment expenses in the Revenue Bill of 1918 suggested by the life insurance companies and adopted by the Senate was not new, and that the limitation on expenses which the companies could take against investment income in all circumstances was one-fourth of 1 per centum of the mean of invested assets. There was no provision for the allowance of actual investment expenses beyond that limitation. The percentage specified was then deemed to be adequate by the insurance companies themselves, the State Insurance Departments, and the Senate.

The question of how life insurance companies should be treated for the purpose of Federal taxation again came before Congress in the consideration of the Revenue Bill of 1921. The life insurance companies through the Associa-

[4] Cong. Rec., Vol. 57, Pt. I, p. 254.

tion of Life Insurance Presidents [5] renewed efforts to obtain a separate classification for purposes of Federal taxation. The Revenue Bill of 1921 as introduced in the House contained the plan for taxing life insurance companies which had theretofore been adopted by the Senate in 1918. (H. Rep. No. 350, 67th Cong., 1st Sess., p. 14.) When the 1921 Revenue Bill was before the Senate Finance Committee a representative of the life insurance companies stated that "all the life insurance companies are behind that [fol. 45] scheme and are satisfied with it." [6] Thereafter, in due course, the Congress after much consideration and consultation with the representatives of the life insurance companies, and with the approval of at least most of the life insurance companies, finally enacted the Revenue Act of 1921, section 245 (a) (5) of which was the same as the provisions of section 203 (a) (5) now under consideration.[7]

At this point it should be noted that the provision with respect to the deduction allowed for investment expenses as finally adopted in the 1921 Act is more liberal as to the amount which may be deducted for investment expenses under certain circumstances than was the original provision proposed in connection with the Revenue Bill of 1918, in that life insurance companies are allowed all actual investment expenses, whereas, under state law and the provision proposed by the life insurance companies and adopted by the Senate in connection with the 1918 Revenue Bill, no investment expenses in any circumstances were allowable beyond the limitation of one-fourth of 1 per centum of the mean of

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[5] At the Annual Meeting of Life Insurance Presidents, December 1920, it was stated in a paper read by Mr. E. E. Rhodes, Vice President of the Mutual Benefit Life Insurance Company, on "Federal Taxation of Life Insurance" that the basis of the income tax was unsatisfactory both to the companies and to the Government, and that a plan similar to that embodied in the Senate Amendment to the 1918 bill should be adopted. Proceedings of the Fourteenth Annual Meeting, pp. 141, 143-145.

[6] Hearings before the Senate Finance Committee, 67th Cong., 1st Sess., on H. R. 8245, September 1-October 1, 1921, p. 84. See also S. Rep. No. 275, 67th Cong., 1st Sess., p. 20.

[7] See sections 242-245, 1921 Act, for the original plan specially taxing life insurance companies, which plan, so far as material here, has remained the same in all subsequent revenue statutes.

the invested assets. But this liberalization was not without limitation and such liberalization applied only in cases where the company did not include any general expenses in its actual investment expenses. In order to control the deduction to be taken against the limited income which was being taxed, and thus avoid uncertainty in respect of the net income of life insurance companies that it chose to tax, Congress limited the deduction to one-fourth of 1 per centum of the book value of the mean of the invested assets "if any general expenses are assigned to or included in investment expenses." The evident purpose and reason for this more liberal provision with reference to the deduction of actual investment expenses, regardless of amount (but subject to the original limitation of one-fourth of 1 per centum if any expenses of a general character were assigned or included), was due to the fact that some of the newer or smaller life [fol. 46] insurance companies (principally the mid-western companies, as shown in the case at bar), where the nature of the companies' investments required field work, invested their funds largely in farm loan mortgages which produced higher rates of interest income and involved also proportionately higher expenses in connection therewith, such as expenses for salaried field representatives for procuring and servicing such loans. The investments of the older and eastern companies were more largely in stocks and bonds which produced a lower interest income and, correspondingly, lower expenses in connection therewith because of such investments being made in a more direct manner. In these circumstances it was known that the actual investment expenses, that is, the expenses directly and entirely incurred in the investment department alone, of the smaller companies might exceed one-fourth of 1 per centum of the book value of the mean of their invested assets, but that in the case of the larger companies, which always hold very large amounts of invested assets, the limitation originally proposed by the life insurance companies would always be sufficiently adequate to cover their actual investment expenses.[8]

[8] The Treasury Department in regulations and practice has uniformly permitted deductions without limitation of direct and actual investment expenses and has uniformly held life insurance companies to the limitation of one-fourth of 1 per centum, when, by whatever method or plan employed, any company assigned to or included in its investment expenses any expense of a general nature, such as general officers' salaries, etc.

Experience has shown that this comparison is correct for the reason that the question with reference to the right to apportion a part of the general expenses to investment expenses, in order to obtain a deduction in excess of one-fourth of 1 per centum of the mean of the invested assets, has only arisen in court in two cases, other than the present case, during the seventeen years the provision has been in effect.

In the instant case, plaintiff's direct and actual investment expenses for 1929, which were allowed by the Commissioner of Internal Revenue and about which there is no dispute, amounted to approximately $37,000, whereas one-fourth of 1 per centum of the mean of the book value of plaintiff's [fol. 47] invested assets at the beginning and end of that taxable year was only approximately $21,000. For 1930 the Commissioner allowed a deduction of actual investment expenses of $42,000 as against such a limitation of $23,000; for 1931 he allowed a deduction of $41,000 as against a limitation of $24,000, and for 1932 a deduction of $37,000 as against a limitation of $24,000. Plaintiff seeks to augment the deductions allowed by the Commissioner for actual investment expenses wholly incurred in that department by an amount in excess of $17,000 for 1929 on account of the allocation to and inclusion in such investment expenses of a portion of the general officers' and employees' salaries, and of more than $21,000 for 1930; $24,000 for 1931, and $26,000 for 1932. These figures appear to illustrate the reason why Congress deemed it advisable to limit the deduction on account of investment expenses to one-fourth of 1 per centum of the mean of the invested assets when the actual investment expenses wholly incurred and paid in maintaining and operating the investment department did not equal or exceed the limitation. Another reason for denying a deduction of any part of a general expense in excess of the limitation was that general income, such as underwriting income and gains and profits on the sale of assets, was being excluded and exempted from taxation. Inasmuch as only the income from the investment department was being made subject to the tax, it would seem that Congress intended that only the actual investment expenses should be allowed when a deduction in excess of one-fourth of 1 per centum was to be permitted. If this were not true the proviso would seem to have no purpose and its provisions would be rendered of no value. It is well established that Congress may condition, limit, or deny deductions from gross income in order to arrive at the

net income that it chooses to tax. Burnet v. Thompson Oil & Gas Co., 283 U. S. 301; Helvering v. Independent Life Insurance Co., 292 U. S. 371.

The reason for exempting premium income of a life insurance company from taxation was because the greater portion, that is, the net premiums paid and also the reserve built up and maintained therefrom with interest, really belongs to the policyholders. In the total of each annual premium paid, there is always included an amount which, [fol. 48] upon the basis of experience, will be sufficient to pay the expenses of the company. Finding 22. New York Life Insurance Co. v. Edwards, 8 Fed. (2d) 851, 853. In that case the court said:

> • • • But the net or mathematical premium is not the full amount each member must pay into a going concern, because it contains no provision for expense of management and unforeseen contingencies, such as excess mortality, diminished interest, investment losses, increased taxation, and the like. Therefore, to provide for these, there is added to the net or mathematical premium a sum technically called "loading." The net or mathematical premium plus the loading constitutes the company's table rate of premium or level premium, and is the estimated sum named in the policy as premium to be paid in advance and adjusted to cost when cost is known, and is the maximum sum which the company can ever require the insured to pay.

Inasmuch, therefore, as premium income was not being taxed and the untaxed premiums contained amounts for payment of the company's expenses, including all its general expenses, the Congress deemed it necessary to make specific provision as to the maximum deduction allowable against the taxable investment income so as to prevent the apportionment and the inclusion of the general expenses in this deduction. When investment expenses wholly incurred in that department do not equal or exceed the limitation specified, the amount of the deduction is entirely arbitrary; however, as stated in the reports of the Congressional Committees,[9] it was considered that adequate provision had been

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[9] H. Rep. No. 350, 67th Cong., 1st Sess., p. 14; Senate Rep. No. 275, 67th Cong., 1st Sess., p. 20.

made for "suitable deductions for expenses fairly chargeable against such investment income."

It is well known, and is admitted in this case, that the expenses of a life insurance company generally fall into three classes, to-wit, underwriting expenses, which are those expenses directly relating to and wholly incurred in that department; investment expenses, which are expenses directly relating to and entirely incurred in the maintenance and operation of the investment department; and general ex- [fol. 49] penses, which include, and can only include, all expenses which are not definitely and entirely either investment or underwriting expenses. The last-mentioned class constitutes the only class of expenses to which the proviso of section 203 (a) (5) could relate. The additional deductions on account of salaries of general officers and employees claimed in this case are a part of this class of expenses as they relate both to the investment and the underwriting departments. The taxpayer in this and other cases sought to include a portion thereof in the deduction for actual expenses in excess of the limitation of one-fourth of 1 per centum by submitting evidence to show that the services and matters for which the expenses were paid had some relation to the investment department and that an apportionment and allocation of a part of such expenses could be made to the investment department on the basis of a reasonable value for such services or other matters to the investment department. Such apportionments and allocations involve approximations, estimates, or guesses which were a feature of administration which, it appears, Congress desired by the proviso to avoid.

In connection with plaintiff's contention that the term "investment expenses" means, and was intended to mean, any expense of a general nature which might be susceptible of reasonable apportionment and allocation as between the underwriting department and the investment department of the business, reference may be made to the discussion of this provision when it was before the Senate Finance Committee.[10] At that time Dr. Adams, who was the representative of the Treasury Department, in discussing the section here under consideration with the committee, pointed out that the

[10] Hearings before the Senate Committee on Finance, 67th Congress, 1st Sess., on the Revenue Bill of 1921. H. Rep. 8245, pp. 89-90.

purpose of this section relating to deductions for investment expenses with the limitation mentioned was to permit those life insurance companies which "very vigorously and exactly allocate or set aside their investment expenses" to deduct such investment expenses and that companies which did not keep their investment expenses accurately and exactly segre- [fol. 50] gated from all other expenses would not be permitted to take a deduction in excess of one-fourth of 1 per centum of the book value of the mean of the invested assets. He was questioned by the chairman of the committee concerning the limitation of one-fourth of 1 per centum, to which he replied that such limitation was a check then imposed upon life insurance companies by law; that "they are quite habituated to it and the practice has shown that it apparently is also quite accurate. If they can allocate and say absolutely just what their investment expenses have been, they are permitted to take them. If they do not go to that trouble, they are not permitted to take more than one-fourth of 1 per centum of the book value of the mean of the invested assets." This explanation when considered in the light of the language of the section shows that the Treasury Department was placing upon the section a construction which would permit a taxpayer to deduct more than one-fourth of 1 per centum of the book value of the mean of the invested assets only when the taxpayer accurately allocated and could say absolutely just what its actual investment expenses had been, and that if such taxpayer did not accurately segregate or allocate its actual investment expenses, that is, those expenses relating directly and entirely to the investment department, it could not have a deduction greater than one-fourth of 1 per centum. In view of the facts and circumstances disclosed by this record, we think this is the correct interpretation of the section. To allocate and say absolutely just what their investment expenses have been precludes the idea (in view of the language of the proviso) of a division of general expenses and the assignment or inclusion of a portion thereof as an "investment expense." If expenses, such as salaries of general officers and employees, which are not entirely incurred and paid in the maintenance and operation of the investment department, may be divided and assigned or allocated in part to the investment department, there would no longer be any "general expense" to which the proviso could apply for substantially all expenses of the company would by that method of division and assignment

become either a direct investment expense or a direct underwriting expense, and the sums assigned to and included in [fol. 51] the investment department deductible without any limitation whatever.[11] The proviso would then be rendered of little, if any effect.

The proviso of the section under consideration seems further to have contemplated that in some cases the actual investment expenses would not equal one-fourth of 1 per centum of the mean of invested assets and that certain general expenses of the insurance company might, with some degree of reasonableness, be said to have some direct relationship to the investment department and also to be reasonably susceptible of division and assignment in part to the different departments of the business. The proviso was therefore so worded as to make it plain that while this was not being prohibited from a bookkeeping or business standpoint the deduction allowable would be limited to the amount specified if it should be found that the actual investment expenses, exclusive of the portions of any general expenses included, were less than an amount computed on the basis of one-fourth of 1 per centum of the book value of the mean of the invested assets. In other words, the term "investment expenses" when considered in connection with the term "general expenses" in the proviso can only mean expenses directly and entirely relating to the investment department, for the language of the proviso permits a taxpayer to include in its investment expenses general expenses

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[11] Among other expenses of a general nature which could with equal facility be apportioned and assigned in part to the investment department, the following might be mentioned: (1) General advertising; (2) salaries of legislative counsel, public relations counsel, and advertising manager; (3) costs of publishing and mailing annual reports and financial statements; (4) sums paid to inactive general employees or pensioners and contributions to pension funds; (5) traveling expenses of company officials attending agency and national conventions; (6) dues and assessments paid to certain bureaus and associations; (7) costs of books, newspapers, and periodicals not used exclusively in either the investment or underwriting departments; (8) public liability insurance premiums; (9) charitable donations and contributions; and (10) license fees paid to various states for the privilege of doing business therein.

in whole or in part to an amount which when combined with the actual investment expenses does not exceed one-fourth of 1 per centum of the mean of invested assets. Therefore, under the strict letter of the statute, and no reason appearing to require the conclusion that the intention of Congress [fol. 52] differed from the ordinary meaning of the language used, the plaintiff having assigned a portion of its general expenses to its investment expenses, and since its actual investment expenses allowed by the Commissioner exceeded one-fourth of 1 per centum of the book value of the mean of plaintiff's invested assets, no additional amount in respect of the allocation made by plaintiff can be allowed.

If the plaintiff in this case should be permitted to make a division of the salaries of the general officers and employees and to assign to and include in investment expenses the amounts which it seeks to include in this case, we would be forced under our interpretation to restrict the total allowance in each year for investment expenses to an amount which would be only slightly more than one-half of the amount which the Commissioner actually allowed for each year. The Commissioner's allowance in each year, although it exceeded one-fourth of 1 per centum of the mean of plaintiff's assets, was correct for the reason that he was able to allocate and say absolutely just what plaintiff's actual investment expenses had been. We are now of opinion that this construction of the provision under consideration conforms in every respect and in each class of cases to both the letter and the spirit of the statute and to the known facts out of which grew the special plan, of which the deduction for investment expenses is an important part, for the taxation of life insurance companies.

The cases of Sun Life Insurance Company of America v. United States, supra, and Volunteer State Life Insurance Company v. Commissioner of Internal Revenue, 27 B. T. A. 1149, cited and followed in the Sun Life case, did not consider and discuss the deduction under section 203 (a) (5) in the light of certain facts and circumstances which here appear and which we now think are controlling upon the question involved.

Plaintiff is therefore not entitled to an additional deduction on account of the salaries of officers and employees which the facts show were for services relating "to matters in all departments of plaintiff's business, that is, in both the investment and underwriting departments."

The second question is whether, in determining net income, a life insurance company is entitled to a deduction on account of reserves held for health and accident (casu- [fol. 53] alty) insurance; that is, are casualty reserves to be treated and deducted as "reserves required by law" within the meaning of the provisions of the taxing act relating solely to life insurance companies. Reserves for accidental death benefits have been allowed and are not in controversy here—finding 20.

The provisions of the Revenue Act of 1928 pertinent to this question are as follows:

Sec. 201. Tax on life insurance companies.

(a) Definition.—When used in this title the term "life insurance company" means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds.

Sec. 202. Gross income of life insurance companies.

(a) In the case of a life insurance company the term "gross income" means the gross amount of income received during the taxable year from interest, dividends, and rents.

Sec. 203. Net income of life insurance companies.

(a) General rule.—In the case of a life insurance company the term "net income" means the gross income less * * *.

(2) Reserve funds.—An amount equal to the excess, if any, over the deduction specified in paragraph (1) of this subsection [tax free interest] of 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year, plus (in case of life insurance companies issuing policies covering life, health, and accident insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation), 4 per centum of the mean of such reserve funds (not required by law) held at the beginning and end of the taxable year, as the Commissioner finds to be necessary for the protection of the holders of such policies only; * * *.

The corresponding provisions of the Revenue Act of 1932 are identical with the foregoing, except that subdivision (2) of section 203 (a) provides for the use of a rate of 3¾ per centum of the mean of the reserve funds instead of 4 per centum in any case where the reserve funds are computed at an interest assumption rate lower than 4 per centum.

[fol. 54] The facts show that in computing the deduction for each year at the percentage specified, plaintiff included the reserves held under health and accident insurance written by it. For 1929 and 1930 the Commissioner of Internal Revenue permitted plaintiff to include in its reserve fund, on which the deduction under section 203 (a) (2) of the Revenue Act of 1928 was computed, the reserves held by plaintiff for health and accident (casualty) insurance in the case of both "Active Lives" and "Disabled Lives," but for 1931 and 1932 he allowed such casualty reserves to be included only for "Active Lives" and excluded the reserves for "Disabled Lives." Plaintiff seeks to recover alleged overpayments for 1931 and 1932 on the ground that the health and accident reserves held by it in the case of "Disabled Lives" were properly to be included in determining the total of the "reserve funds required by law" within the meaning of the above-quoted sections, 201 (a) and 203 (a) (2).

The defendant, while not seeking an affirmative judgment, since the assessment of any additional tax for any of the four years involved is barred, contends here that the allowance of any reserve deduction on account of health and accident insurance, whether for "Active Lives" or "Disabled Lives," is erroneous. In other words, the defendant contends that under sections 201 (a) and 203 (a) (2), Acts of 1928 and 1932, the reserve to be used in determining the deduction to be allowed to a Life Insurance Company means the amount which is attributable to and represents the value of the life-insurance elements of the policy contracts and does not include casualty reserves. It is the position of defendant that only those reserves held under contracts involving life contingencies are deductible by a corporation taxable as a life insurance company.

It is agreed that plaintiff is in fact and in law a life insurance company and that it is taxable only under those provisions of the statutes which relate exclusively to life insurance companies. As stated under the first issue, the pro-

visions which impose the tax only upon investment income of such companies have been the same under all the revenue acts since, and including, the Revenue Act of 1921, and [fol. 55] under these statutes a life insurance company is not taxable on underwriting income or on earned premiums, or gains or profits which it may realize on the sale or disposition of any of the numerous assets which it necessarily owns. For this reason the taxing acts do not permit deductions to life insurance companies upon the same basis as deductions are allowed to other classes of insurance companies or to corporations in general. The section under which the deductions on account of health and accident reserves here involved are claimed by plaintiff to be allowable provides for a deduction of an amount equal to 4 per centum of the mean of the reserve funds required by law to be held at the beginning and end of the taxable year. This provision relates exclusively to life insurance companies, either stock or mutual, and does not relate and is not to be found in the provisions of the statutes relating to the taxation of casualty insurance companies or to other classes of insurance. The provisions of section 203 (a) (2) are entirely unlike the provisions of section 208 (c) (1) (A) of the Revenue Acts of 1928 and 1932 permitting "Mutual Insurance Companies other than Life" to deduct the net addition required by law to reserve funds. Such companies are taxable upon premium received and all other income, and the deduction of the net addition to reserve funds is allowed in addition to the deductions specified in section 23.

The question here, therefore, is whether the term "reserve funds required by law" (sec. 203 (a) (2)), which relates to reserves of life insurance companies only, includes when considered with section 201 (a), reserves held by a life insurance company on account of outstanding policies of health and accident insurance, that is, casualty insurance, as well as reserves held on account of outstanding life insurance policies. We are of opinion that reserves held under health and accident insurance contracts are not properly to be included in the reserve fund required by law to be held by a life insurance company for the purpose of deduction from income for tax purposes.

The definition of a life insurance company as set forth in section 201 (a) quoted above was enacted for the purpose of taxing insurance companies according to the predominant kind of insurance issued by them. It was not necessary to

[fol. 56] define other insurance companies for the reason that the revenue acts treat them separately and classify them either as "Insurance Companies other than Life or Mutual," which includes a casualty insurance company (sec. 204, Act of 1928), or as "Mutual Insurance Companies other than Life" (sec. 208). The gross income of insurance companies taxable under sections 204 and 208 includes the combined gross amount derived during the taxable year from investment income, from underwriting income, and from gain from the sale or other disposition of property, less the deductions therein specified.

Basically the question whether the health and accident (casualty) reserves claimed by plaintiff are a part of its "reserve funds required by law" within the meaning of section 203 (a) (2) depends upon the question whether such health and accident reserves are to be included in the reserves for life insurance and annuity contracts for the purpose of determining whether an insurance company is a "life insurance company" within the meaning of section 201 (a) of the Revenue Act of 1928 for the purpose of taxation under sections 202 and 203. Both parties agree as to this. The first consideration, therefore, is directed to the comparative to be used in determining whether an insurance company is a "life insurance company." We are of opinion that since the purpose of the definition contained in section 201 (a) is one of classification, the test provided is the amount of reserve funds held for life insurance and annuity contracts as against the reserve funds of the company concerned which are held for health and accident insurance, and that the words "total reserve funds" used in that section mean the sum of the life insurance and annuity contract reserves and the health and accident, or casualty, reserves. This section was dealing only with technical insurance reserves, rather than with the total of such reserves plus reserves for pure liabilities. The purpose of the section was to provide a simple rule to be applied in determining whether an insurance company which writes life insurance and annuity contracts, and, also, health and accident insurance, should be taxed under the special plan specified in sections 202 and 203 relating exclusively to life insurance companies, or whether such [fol. 57] companies should be taxable under section 204.

Insurance companies issuing life insurance and annuity contracts may, and many do, write health and accident in-

surance. This is casualty insurance, and is the only kind of insurance other than life that a life insurance company writes or is permitted to write under the laws of the various states. The statutes of the State of Washington, the home state of plaintiff, classify health and accident insurance as casualty insurance, and also specifically provide that this is the only kind of insurance other than life that a life insurance company is permitted to issue.[13] For these reasons we think it is clear that the comparative in the definition stated by Congress under which an insurance company is to be classified either as life or as a casualty company is that existing between the reserves of such company for life insurance and annuity contracts and its health and accident reserves. When section 242 of the Revenue Act of 1921, which was the same as section 201 (a) here involved, was under consideration by the Finance Committee of the Senate[14] a representative of the Treasury Department was asked by the committee to "Explain that 50 per cent of its total reserve funds, and why take 50 per cent instead of some other figure?" to which Dr. T. S. Adams, representing the Treasury Department, replied "Some companies mix with their life business, accident and health insurance. It is not practicable for all companies to disassociate those businesses so that we have assumed [in drafting the bill which was then being considered by the committee] that if this accident and health business was more than 50 per cent of their business, as measured by their reserves, it could not be treated as a life insurance company. On the other hand, if their accident and health insurance were incidental and represented less than 50 per cent of their business we treated them as a life insurance company."

If the phrase "total reserve funds" at the end of section 201 (a) means the total of all the reserves for all classes of [fol. 58] insurance written by the insurance company under consideration, the definition, would under plaintiff's contention, be rendered meaningless and every insurance company writing life insurance would be a life insurance company even though its casualty reserves constituted the largest

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[13] Pierce's Code (1929), Vol. 1, Washington General Statutes. Sections 2990 (83), 2991 (84), 2999 (92), and 3001 (94).

[14] Hearings before the Committee on Finance of the Senate, 67th Cong., 1st Sess. (H. R. 8245), pp. 92-93.

proportion of all its insurance business. If the term "total reserve funds" refers to and includes the company's total liabilities, for which all state laws require insurance companies to hold reserves, the definition would be rendered useless.

The net value reserves of a life insurance company, whether or not it also writes health or accident insurance, always constitute the greater portion of its total liability reserves. This is true of any insurance company, whether life or casualty. This is disclosed by the published reports of "The New York State Insurance Department," which show that in all life insurance companies reporting in that state the net value reserves of such companies constitute approximately from 85 to 90 per centum of their total liabilities. These averages are also true in respect of plaintiff's net value reserves. While it does not report to the New York Insurance Department, since it does no business in that state, its annual statements are published in "Best's Life Insurance Reports," which show that plaintiff's net value reserves for all classes of insurance issued by it have always averaged about 90 per centum or more of its total net liabilities, that is, about the same as all other insurance companies doing the same class of insurance business. In these circumstances there would be no necessity for a classification upon the basis provided in that section since the reserves of an insurance company writing life insurance and annuity contracts, whether or not it also writes health or accident insurance, held on account of the net values of insurance contracts would never be less than 50 per centum of its total liabilities. The nature of the insurance business precludes that possibility.

Inasmuch as the comparative for determining whether an insurance company is taxable as a life insurance company under section 202, or as a casualty company under section 204, is the ratio between its life reserves and its casualty reserves, and, by this test, it being undisputed that [fol. 59] plaintiff is a life insurance company, its tax is to be exclusively determined under the provisions relating to life insurance companies.

This brings us to the next phase of the question, which is whether casualty reserves, that is, the reserves for health and accident insurance issued by plaintiff, come within the provisions of section 203 (a) (2) which, as hereinbefore stated, allow a deduction to a life insurance company of an

amount equal to 4 per centum of the mean of the reserve funds required by law to be held at the beginning and end of the taxable year.

Since the statute places life insurance companies in a special class and taxes them upon only a portion of the gross income as defined in cases of other classes of corporations and insurance companies, we are of opinion that Congress used the term "reserve funds" in section 203 (a) (2) in the same sense in which it was used in section 201 (a) just considered. In other words, when an insurance company has been classified as a life insurance company in accordance with section 201 (a), the reserves to be included under section 203 in determining the 4 per centum deduction are those reserves which are held by such company on account of its life insurance and annuity contracts. This excludes reserves for such casualty insurance as a life insurance company may write. Additional reasons which we think require the conclusion that casualty reserves are excluded in determining the reserve deduction allowable to a life insurance company are (1) that Congress placed such a company in a special class and taxed it upon only its investment income and that this classification and method of taxation were due to the fact that reserves for life insurance and annuity contracts really belong to the policyholders, and (2) that premiums paid on casualty insurance belong to the insurance company and the reserves required to be maintained therefor by state laws are, in effect, and from the standpoint of Federal taxation, liability or solvency reserves because if the casualty, to which the health and accident contract relates, does not happen or if the policy should lapse or be canceled the company is never called upon to make any payment. This, we think, was the reason for taxing casualty companies in the manner specified in sec- [fol. 60] tion 204. An insurance company incorporated as a casualty company does not write life insurance, although some life insurance companies write casualty insurance.

The meaning of the phrase "reserve funds required by law" as used in the taxing acts in its relation to a life insurance company has been decided in a number of cases. Helvering v. Illinois Life Insurance Company, 299 U. S. 88, 90, 91, involved deductions claimed for reserves held on account of the survivorship investment fund feature of certain life insurance policies, and the question was whether reserves for this feature of the policies were to be included

in determining the allowable deduction. The court said at pages 90, 91:

The phrase "required by law" includes only reserves that directly pertain to life insurance. Other reserves, even though required by state statutes regulatory of the business authorized to be carried on by life insurance companies, are not included. * * *

Its [the life insurance company's] life insurance liability arises upon the death of the insured. Ascertainment of the reserves attributable to that liability involves consideration of the amount contributed to them out of premiums plus interest for a period estimated on the basis of mortality. The survivorship investment fund feature of these policies has no relation to life insurance risks. [Italics supplied.]

The case of Continental Assurance Co., Inc. v. United States, 79 C. Cls. 756, 765, involved deductions for reserves held for coupons attached to certain life insurance policies of a stock company, which were equivalent to dividends in the case of a Mutual Life Insurance Company, and the question was what reserves of a life insurance company are included in the term "reserve funds required by law." We held that the reserve contemplated in the taxing act is that fund which when added to the present value of future net premiums is equal to the present value of future death claims; that is, the mathematical equivalent of the obligation incurred by the company to pay the sum insured at the death of the policyholder, or upon the surrender and cancel-ation of the policy. The principle decided in that case was approved in Helvering v. Inter-Mountain Life Insurance Company, 294 U. S. 686, 690, in which the court held that "In life insurance the reserve means the amount, accumulated [fol. 61] by the company out of premium payments, which is attributable to and represents the value of the life insurance elements of the policy contracts."

The facts in the case at bar show that plaintiff's reserves for health and accident insurance are not held on account of life insurance and that they are not of the same character as technical life insurance reserves. They do not include life contingencies. Such casualty reserves are calculated upon the basis of Tables of Probabilities as reserves for other classes of casualty risks are computed. These reserves are required by the law of Washington to be computed upon the net premium basis and they do not involve

the element of life insurance as a liability. The life risk is the basis of life insurance reserves. Although the experience tables used in computing health and accident reserves take into consideration the mortality element, this is merely incidental and does not involve the element of life risk as in the case of life insurance. The purpose of considering the mortality element and the nature of the risk in casualty insurance is the opposite of that of the reserve for the life risk in a life insurance policy. The mortality element in a life policy requires the establishment of a reserve sufficient to meet the policy obligations at maturity; that is, at death. In the case of health and accident insurance death, instead of maturing the liability, terminates the risk with respect to the payment of liability for disability benefits. The health and accident reserve is never built up or maintained to provide for a life risk, inasmuch as there is no such risk which the company can ever be called upon to meet in health and accident insurance.

Plaintiff insists that the health and accident reserves here involved are deductible for the reasons that they are set up and maintained out of premiums, are calculated upon an experience table applicable to the nature of the risk, and are held to meet contingent policy obligations at maturity. But under the scheme for taxing life insurance companies this is not controlling and does not render them of the same character as life reserves. All casualty reserves have these characteristics. But life insurance reserves, as hereinbefore mentioned, are, in effect, and always in the end, the property of the policyholder. This was the reason for the [fol. 62] adoption of the special method of taxing life insurance companies. The holder of a life insurance policy may demand and receive the reserve which is shown in the table of loan and non-forfeiture value of the policy, and if the policy lapses before death a life insurance company must account to the insured for the full reserve value of the policy. This is not true of any other form of insurance and more particularly of casualty insurance involved in the case at bar. The net value of the health and accident policy is not increased by the reserves. They are never returnable in any amount to the policyholder if the policy lapses, is surrendered, or otherwise terminates. Moreover, the contingency for which such reserves are maintained may never happen. In that event the interest included in the reserve, and non-taxed, is released to the absolute use and benefit

of the company. There is no provision in the statute relating to life insurance companies for the taxation of this interest element of the casualty reserves, when so released. This, we think, is the very basis of the definition, for if a life insurance company is to be taxed only upon its income from investments and not on its premium income, or from gains or profits generally, the Congress did not intend to allow such company a deduction in respect of premium income that belonged to it even though in respect of such premium income it might later be called upon to make some payment.

Why was a company which writes life and also casualty insurance made taxable as a life insurance company or a casualty company according to the amount of reserves maintained for each class of insurance? We think the answer is, that if the greater proportion of its business is life insurance it would be unfair to tax it upon its premium receipts and gains or profits, because the net premiums belong to the policyholders, whereas, if the larger proportion of the business is casualty insurance, the company should be taxed under section 204 on its premium receipts and other income, because such premiums belong to the company, and the reserves for any payments which the company might be called upon to make would have no place for tax purposes in the plan of taxation since they are, from that point [fol. 63] of view, in the nature of liability or solvency reserves. It is well settled that liability or solvency reserves are not deductible by the company taxable as a life insurance company. As above stated, if a company is taxed as a life insurance company and is permitted to deduct casualty reserves which it may never be called upon to use for the purpose of making any payments under its contracts, such company would be obtaining an undue advantage for the reason that a portion of the only income taxable under the provisions relating solely to life-insurance companies would entirely escape taxation to the extent that the health and accident policies otherwise might lapse, be canceled, or terminate by death. We think that Congress intended the reserve deductions to conform to the special plan for taxation of life insurance companies. The inclusion of reserves maintained out of premiums which belonged, when paid, to the company would not comport with the statutory plan.

Plaintiff contends, however, that if casualty reserves are to be excluded in any cases it was not the intention of the act to exclude them in combined policies of Life, Health, and Accident Insurance. We think this is unimportant. The health and accident portion of the combined policies are entirely separate contracts, New York Life Insurance Company v. United States, 12 Fed. (2d) 643. The health and accident premiums are separately shown therein. The specimen policy in evidence in this case shows that with the page covering casualty insurance removed it is a complete life insurance policy. When the insured desires health and accident insurance it is only necessary for the company to insert a page covering that class of insurance in its regular insurance policy form. Moreover, the disability insurance may be discontinued without affecting the life insurance and the reserves held on account of the health and accident insurance do not enter into the amount of the reserves held by the company on account of life insurance covered by the policy, or the surrender, cash, or loan value shown therein. The two contracts are as separate and distinct as if written in separate policies. Plaintiff combines the two classes of insurance in one policy for the reason that it does [fol. 64] not write disability insurance except when the applicant also purchases life insurance.

Plaintiff further contends that it is entitled to a deduction in respect of the health and accident reserves for the reason that they are technical insurance reserves. We think this contention cannot be sustained for the reasons above stated and for the further reason that we are here concerned with a life insurance company and the casualty reserves in question are not technical life insurance reserves. Their allowance would therefore result in a deduction to a life insurance company for casualty reserves which even a casualty company is not permitted to take for this class of insurance under the taxing provisions relating to such companies. The decisions of the United States Board of Tax Appeals in The Equitable Life Assurance Society of the United States v. Commissioner of Internal Revenue, 33 B. T. A. 708; Monarch Life Insurance Company v. Commissioner, 38 B. T. A. 716; Pan-American Life Insurance Company v. Commissioner, 38 B. T. A. 1430; and Oregon Mutual Life Insurance Company v. Commissioner, (memorandum opinion), docket nos. 85182 and 88299, do not appear to have given consideration and weight to this dis-

tinction. These decisions of the Board of Tax Appeals appear to rest upon the proposition that any reserve which is a technical insurance reserve is deductible by a life insurance company taxable under those provisions relating exclusively to such companies. The distinction between technical life insurance reserves and other technical insurance reserves, including liability of solvency reserves, has been observed in the leading cases, especially the more recent decisions upon the subject of technical insurance reserves, both in respect to the question of the net additions to reserve funds arising under the earlier revenue acts and to the deduction of 4 per centum of the mean of the reserve funds under the provisions relating entirely to life insurance companies in the Revenue Act of 1921 and subsequent acts. A comparison of the decisions in McCoach v. Insurance Company of North America, 244 U. S. 585; United States v. Boston Insurance Co., 269 U. S. 197; New York Life Insurance Co. v. Edwards, 271 U. S. 109, and other [fol. 65] cases similar in character, with the decisions in Helvering v. Inter-Mountain Life Insurance Co., supra; Continental Assurance Co., Inc. v. United States, supra; and Helvering v. Illinois Life Insurance Co., supra, discloses an adherence to the principle that "reserve funds required by law" within the meaning of the taxing acts are those technical insurance reserves which are peculiar to the character of insurance companies claiming the deduction. In other words, a company which is taxable as a life insurance company may deduct only technical life insurance reserves which is the reserve attributable to and represents the value of the life insurance elements of the policy contracts.

Plaintiff also contends that inasmuch as interest is credited to the health and accident reserves here involved a proper consideration of its contractual obligations would require that such interest be exempted from taxation under the statute which lays a tax only upon investment income. This is a matter of policy which rests with Congress. It was evidently considered that the amount of casualty premiums which the company would probably never be called upon to pay under its health and accident insurance would sufficiently compensate for the taxation of any interest element in such reserves. Moreover, the interest element was involved in other reserves which have been denied as deductions to a life insurance company in certain of the cases

hereinbefore cited. In addition, it should again be pointed out in this connection that this form of casualty insurance is taxable, if at all, under the provisions of the statute relating to insurance companies other than life or mutual. The basis upon which such insurance is taxable is quite different from that of life insurance companies and no deduction whatever is allowed on account of the mean of the reserve funds, but instead a deduction is allowed for claims accrued or losses incurred. In the classification of a company for the purpose of Federal taxation, advantages as well as disadvantages to the taxpayer may occur. By being classified as a life insurance company plaintiff avoids the tax on premium income from its health and accident insurance for the reason that the provisions relating to a life [fol. 66] insurance company do not lay a tax upon earned premiums nor upon gains or profits on the sale or other disposition of property. Neither does the statute, insofar as it relates to life insurance companies, permit deductions on account of that class of business. As was said by the court in Shapleigh Hardware Co. v. United States, 81 Fed. (2), 697, "The question is not whether this is a deduction which the taxpayer should, in fairness, be permitted to take, but whether it is a deduction which is clearly provided for in the Revenue Act." The presence of interest in a reserve does not, of itself, entitle the company to take the reserve as a deduction. The reserve disallowed by the court in Helvering v. Illinois Life Insurance Co., supra, was created out of premiums and improved with part of the company's interest earnings.

We think the portion of the legislative history of the Revenue Bill of 1932 referred to by plaintiff in support of its arguments on the interest content of the health and accident reserves here in issue has no important bearing upon the question whether such reserves are deductible. The part relied upon only explains the reason due to the decline in interest rates for changing the deduction on account of the reserves required by law within the meaning of the taxing statutes from 4 to 3½ per centum.

Finally plaintiff contends on this issue that a deduction should be allowed on account of reserves for health and accident insurance because of the prior regulations and practice of the Treasury Department under which such reserve deductions have been allowed until recently, when the

Treasury Department began to disallow deductions on account of reserves for "Disabled Lives." The past regulations and practice of the Treasury Department with reference to reserve deductions have not been entirely consistent. The regulations and practice in existence subsequent to January 1920 [15] and prior to Treasury Decision 4615, December 18, 1935 (33 T. D. 288), were not in harmony with the decisions of the Supreme Court hereinbefore cited. Although departmental regulations and practice will, in a [fol. 67] proper case, be given great weight, they cannot abridge the law and they can only stand if they correctly interpret the statute. As was said by the court in Koshland v. Helvering, 298 U. S. 441, 445, "The question here, however, is not merely of our adopting the administrative construction but whether it should be adopted if in effect it converts an income tax into a capital levy." Similarly the question here is whether the past practice relied upon by plaintiff has permitted deductions to be taken by a life insurance company which are not allowable under the statute. Compare M. E. Blatt Co. v. United States, — U. S. — (decided December 5, 1938). Inasmuch as deductions from gross income are matters of grace, only those items which clearly come within the class to which the particular statutory provision relates may be allowed. There is no room for implications or inferences, except as they are inevitable from the context. The rule that statutes levying taxes may not be extended by implication beyond the clear import of the language used nor their operations enlarged so as to embrace matters not specifically pointed out applies with equal or greater force to the determination and allowance of deductions. Helvering v. Stockholms Enskilda Bank, 293 U. S. 84, 87, 91, 93. Cf. United States v. Pleasants, — U. S. —, decided January 3, 1939 (86 C. Cls. 679).

The present regulations as amended by T. D. 4615, supra, are not inconsistent with our conclusion that health and accident reserves are not deductible by a life insurance company. The regulations, as so amended, provide, in effect, that for the purpose of the deduction by a life insurance

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[15] The date of the decision in Maryland Casualty Co. v. United States, 251 U. S. 342. See Continental Assurance Co., Inc. v. United States, 79 C. Cls. 756, 768. Massachusetts Mutual Life Insurance Co. v. United States, 74 C. Cls. 162, 166-171, 56 Fed. (2d) 897.

company the reserve contemplated does not include reserves not involving life contingencies.

We are of opinion that plaintiff is not entitled to recover and the petition must be dismissed. It is so ordered.

Whaley, Judge; Williams, Judge; Green, Judge; and Booth, Chief Justice, concur.

[fol. 68] V. JUDGMENT

At a Court of Claims held at the City of Washington on the 6th day of March, A. D., 1939, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that the plaintiff is not entitled to recover.

It is Therefore Adjudged and Ordered that the plaintiff's petition be and the same is hereby dismissed.

VI. PROCEEDINGS AFTER ENTRY OF JUDGMENT

On May 5, 1939, the plaintiff filed a motion for a new trial.

On May 29, 1939, the court entered the following order on said motion:

Order

It is Ordered this 29th day of May, 1939, that the plaintiff's motion for new trial be and the same is hereby overruled.

[fol. 69] Clerk's Certificate to foregoing transcript omitted in printing.

NUMBER 0000

✓ Stipulation Exhibit A

AGE 35

New World

AMOUNT $1,000.00

PREMIUM $ 36.30

Life Insurance Company

[redacted]

HEREBY PROMISES AND AGREES TO PAY

ONE THOUSAND Dollars,
the Principal Sum Insured,

to JOHN DOE, the Insured;

of SEATTLE, County of KING, State of WASHINGTON,

if living on the FIRST day of MAY, 1982, and this Policy

is then in force; or, to MARY DOE, WIFE of
the Insured, or to such other Beneficiary as may be duly designated as provided herein, immediately upon receipt of due proof of the death of said Insured, subject to the terms and provisions of this Policy.

This Policy is free from conditions as to Residence, Travel, or Place of Death.

This Insurance is granted in consideration of the application herefor, which is hereby made a part of this

Contract, and the payment of Thirty-six & 30/100 Dollars,

upon the First day of May, 1932

as the premium to provide the Legal Reserve and Term Insurance for one year from the date hereof, and of the further payment of

Thirty-six & 30/100 Dollars,

upon the First day of May

in each and every year thereafter until premiums for Twenty full years in all shall have been paid, or until the prior death of the Insured.

The privileges, benefits and provisions printed and written on the following pages by the Company are made a part of this Contract, as fully as if they were recited at length over the signatures hereto affixed. Unless otherwise herein especially stipulated, the first policy year shall begin on the date stated next below but in no case shall this Policy take effect until approval of the application therefor by the Company and until the payment of the first premium, both during the good health of the applicant.

In Witness Whereof, NEW WORLD LIFE INSURANCE COMPANY has caused this

Policy to be signed as of the First day of May, 1932

SECRETARY

John Flanigan
PRESIDENT

APPLICATION APPROVED BY RISK COMMITTEE
[illegible] 1932

New World Life Insurance Company

AMOUNT $1,000.00

PREMIUM $ 36.30

[redacted]

HEREBY PROMISES AND AGREES TO PAY

[redacted] ONE THOUSAND [redacted] Dollars,
the Principal Sum Insured,

to [redacted] JOHN DOE [redacted], the Insured;

of [redacted] SEATTLE [redacted], County of [redacted] KING [redacted], State of [redacted] WASHINGTON [redacted],

if living on the [redacted] FIRST [redacted] day of [redacted] MAY [redacted], 1982 [redacted] and this Policy

is then in force; or, to [redacted] MARY DOE, WIFE [redacted] of the Insured, or to such other Beneficiary as may be duly designated as provided herein, immediately upon receipt of due proof of the death of said Insured, subject to the terms and provisions of this Policy.

This Policy is free from conditions as to Residence, Travel, or Place of Death.

This Insurance is granted in consideration of the application herefor, which is hereby made a part of this Contract, and the payment of [redacted] Thirty-six & 30/100 [redacted] Dollars,

upon the First day of [redacted] May, 1932 [redacted]

as the premium to provide the Legal Reserve and Term Insurance for one year from the date hereof, and of the further payment of

[redacted] Thirty-six & 30/100 [redacted] Dollars,

upon the First day of [redacted] May [redacted]

in each and every year thereafter until premiums for [redacted] Twenty [redacted] full years in all shall have been paid, or until the prior death of the Insured.

The privileges, benefits and provisions printed and written on the following pages by the Company are made a part of this Contract, as fully as if they were recited at length over the signatures hereto affixed. Unless otherwise herein especially stipulated, the first policy year shall begin on the date stated next below but in no case shall this Policy take effect until approval of the application therefor by the Company and until the payment of the first premium, both during the good health of the applicant.

In Witness Whereof, NEW WORLD LIFE INSURANCE COMPANY has caused this Policy to be signed as of the [redacted] First [redacted] day of [redacted] May [redacted], 19 32

SECRETARY

PRESIDENT

APPLICATION APPROVED BY RISK COMMITTEE
DATE May 1, 1932

NON-PARTICIPATING.

50 YEAR ENDOWMENT MATURING AT AGE 85 (PREMIUMS PAYABLE FOR 20 YEARS).

TOTAL AND PERMANENT DISABILITY
AND ACCIDENTAL DEATH BENEFITS

ASSIGNMENT

Any assignment of this Policy must be made and sent to the Home Office of the Company in duplicate, one copy to be retained by the Company and the other returned to the Insured. The Company assumes no responsibility for the validity of any assignment.

CHANGE OF BENEFICIARY; RIGHTS OF INSURED

The Insured may change any designated Beneficiary at any time during the continuance of this Policy, provided it is not then assigned, by filing with the Company a written request therefor accompanied by this Policy; such change to take effect upon the endorsement of the same on the Policy by the Company, whereupon all interest of the former Beneficiary shall cease. If no Beneficiary shall survive the Insured, the Policy shall be payable to the Insured's executors, administrators, or assigns.

This Policy is issued with the express understanding that the Insured may, without the consent of the Beneficiary, receive every benefit, exercise every right, and enjoy every privilege conferred upon him by this Policy.

FOR HOME OFFICE ENDORSEMENT ONLY

REGISTER OF CHANGE OF BENEFICIARY

NOTE—No change, designation or declaration shall take effect until endorsed on this Policy by the Company at the Home Office.

DATE ENDORSED	BENEFICIARY	ENDORSED BY

General Privileges, Benefits and Provisions.

Premiums

All premiums are due and payable in advance at the Home Office of the Company, [redacted] Washington, or, at the pleasure of the Company, to a designated Collector, but in any case only in exchange for the Company's receipt therefor, signed by the President or Secretary, and countersigned by such Collector.

If any premium is not paid when due, this Policy shall be null and void and all premiums forfeited to the Company, except as herein otherwise provided.

Grace

A grace of one month, (not less than thirty days) will be allowed for the payment of all premiums after the first during which period this Policy shall remain in full force.

Notice

Notice of premiums coming due will be sent to the Insured but the Company assumes no responsibility for the miscarriage or non-delivery of any notice.

Authority of Agents

No Agent has power on behalf of the Company to make or modify contracts, to extend the time of payment of premium, to waive any forfeiture, to bind the Company by making any promise or representation, or to deliver any policy contrary to the provisions thereof. These powers can be exercised only by the President or Vice-President, and Secretary or Assistant Secretary, of the Company (and then only in writing), and will not be delegated.

Contract: Incontestability

This Policy and the application therefor, a copy of which is attached hereto, constitute the entire contract between the parties hereto, and shall be incontestable after two years from date except for non-payment of premiums and except as to any provisions and conditions relating to Disability and Accidental Death Benefits; provided, however, that

Military and Naval Service

In the event of the death of the Insured at any time during the life of this Contract and while engaged in Military, Naval, or Aerial Service (as a part thereof) in time of war, without first having obtained written permission from the Company, the Company's liability hereunder shall be limited to the amount of premiums paid hereunder;

Suicide

Provided, however, that in the event of the death of the Insured by his own act, whether sane or insane, within two years from the date of this Policy, the Company's liability hereunder shall be limited to the amount of premium paid hereon.

Representations

All statements of the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the Policy unless it is contained in the written application, and a copy of such application shall be endorsed hereon or attached hereto.

Age

If the age of the Insured has been misstated, the amount payable under this Policy shall be such as the premium paid would have purchased at the correct age.

Indebtedness

Upon any settlement under this Policy, all indebtedness to the Company on the Policy and also, in the event of death, any unpaid portion or installment of the full premium for the current policy year, shall be deducted from any sum payable by the Company.

Reinstatement

After default in the payment of any premium and unless previously surrendered, this Policy may be reinstated at any time upon the production of evidence of insurability satisfactory to the Company, and the payment of all past due premiums with interest thereon at the rate of six per centum per annum from their respective due dates;—provided, that any indebtedness to the Company upon this Policy existing at the date of such default, together with compound interest thereon to the date of reinstatement, at the rate of six per centum per annum, shall be a first lien upon the Policy if not paid in cash at the date of reinstatement of the Policy.

Cash Loans

At any time after the payment of premiums for three full years and while this Policy is in force, the Company will loan upon proper assignment of this Policy, and upon the sole security thereof, all or any part of the sum stated in Column 1 of the Table of Loan and Non-forfeiture Values herein, subject to the deduction of all premiums for the current policy year and all existing indebtedness to the Company on the Policy. This loan shall bear interest at the rate of six per centum per annum, payable in advance to the end of the current policy year and annually thereafter, and may be deferred for not exceeding ninety days, unless made for the purpose of paying a premium hereon. Failure to repay any such loan, or to pay the interest thereon, shall not avoid the Policy until the total indebtedness to the Company shall equal or exceed the loan value nor until one month after notice has been mailed by the Company to the last known address of the Insured and of the Assignee, if any.

Premium Loans

Loans to pay premiums will be made (if written request therefor shall have been included in the application for this Policy, or if filed by the Insured at the Home Office of the Company before default in the payment of any premium) as follows:

If any premium hereon is not paid when due after the Policy shall have been in force for three full years, the Company will, without further action by the Insured, charge the amount of premium then due hereunder as a loan against the Policy, with interest in advance at the rate of six per centum per annum, if the Cash Value of this Policy at the end of the period which such premium would cover is sufficient to secure all indebtedness hereon, including such unpaid premium, with interest as above. The same benefit will be applied from time to time, as premiums become due hereunder and are not paid, as long as the available Cash Value is sufficient to pay for one day's insurance. The Insured may resume the payment of premiums hereon at any time without medical examination, while the Policy is so continued in force by such Premium Loans. The indebtedness hereunder will be subject to the provisions relating to repayment stated under Cash Loans, above. The Insured may at any time revoke the request for Premium Loans by filing a written revocation with the Company at its Home Office.

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TABLE OF LOAN AND NON-FORFEITURE VALUES

The values in the Table below apply only if there be no indebtedness under this Policy, and apply only to completed policy years. If default occurs after a fractional part of the current policy year's premium has been paid, the non-forfeiture values provided for below shall be adjusted proportionately.

YEARS Premiums PAID	CASH OR LOAN (Column 1)	PAID-UP ENDOWMENT INSURANCE (Column 2)	PAID-UP TERM AND PURE ENDOWMENT (Column 3)			YEARS Premiums PAID	CASH OR LOAN (Column 1)	PAID-UP ENDOWMENT INSURANCE (Column 2)	PAID-UP TERM AND PURE ENDOWMENT (Column 3)		
			Yrs.	Days	Pure Endowm't				Yrs.	Days	Pure Endowm't
3	43	108	4	343	--	13	313	640	22	360	--
4	66	163	7	223	--	14	345	690	23	324	--
5	89	216	10	48	--	15	379	741	24	312	--
6	114	271	12	219	--	16	414	792	25	321	--
7	139	323	14	258	--	17	451	844	27	44	--
8	166	378	16	234	--	18	489	896	28	243	--
9	193	430	18	85	--	19	528	947	30	338	--
10	221	482	19	224	--	20	569	1000	PAID	UP	--
11	251	536	20	326	--	25	631	1000			
12	281	587	21	349	--	30	694	1000			

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The above options are all of equal value and are based upon the Reserves on this Policy, at the end of policy years, with a surrender charge in no case of more than two and one-half per centum of the face of this Policy. The Reserve on this Policy shall be computed upon the basis of the American Experience Table of Mortality with interest at the rate of three and one-half per centum per annum and by the Illinois Standard Method. Values for years not shown will be furnished upon request, and will be equal to the entire Reserve under this Policy according to the aforesaid Table and interest rate.

NON-FORFEITURE AND SURRENDER OPTIONS

If default shall be made in the payment of any premium after payment of premiums for three years, if there be no indebtedness to the Company under this Policy, the Insured shall be entitled to one of the following options; **All of Equal Value:**

(a) Without any action on the part of the Insured, and without the payment of further premiums, this Policy will be continued as Paid-up Term Insurance for its Principal Sum, for the term specified in Column 3 of the Table above, (or the extension thereof for years not shown) such term to be reckoned from the due date of the unpaid premium; and, if such term extends to the end of the endowment period, with the Pure Endowment specified payable to the Insured, if living, at the end of such term; OR,

(b) Upon written application of the Insured therefor, made to the Company at its Home Office within sixty (60) days from the date of such default, the Company, on legal surrender of this Policy, will issue in exchange therefor a Paid-up Endowment Policy for the amount specified in Column 2 of said Table and payable at the same time as is this Policy; OR,

(c) If this Policy be legally surrendered to the Company at its Home Office within sixty (60) days from the date of such default, the Company will pay therefor in cash, the sum stated in Column 1 of said Table. The payment of such Cash Value may be deferred by the Company for a period of not exceeding ninety days.

If there be any indebtedness to the Company under this Policy, the values in the said Table above shall be reduced in the following manner:

(d) From the Cash Value, provided for in Paragraph (c) above, shall be deducted such indebtedness and the excess of said Cash Value over said indebtedness shall, without any action on the part of the Insured, be applied to the purchase of Paid-up Term Insurance for this Policy's Principal Sum and for such term, to be reckoned from the due date of the unpaid premium, as the said excess will purchase at the Insured's then attained age at net single premium rates, according to the American Experience Table of Mortality and 3½ per centum interest. Should such excess be more than sufficient to provide such insurance to the end of the endowment period, the balance, after providing such insurance, shall be applied at net single premium rates by the Mortality Table and interest rate aforesaid, to the purchase of a Pure Endowment payable to the Insured, if living at the end of such period; OR,

(e) Upon written application of the Insured, made therefor to the Company at its Home Office within sixty (60) days from such default, and upon legal surrender of this Policy, such excess shall be applied to the purchase of a Paid-up Endowment Policy, payable at the same time as is this Policy, for such amount as the excess above referred to will purchase at the Insured's then attained age at net single premium rates according to the Mortality Table and interest rate aforesaid; OR,

(f) If this Policy be legally surrendered to the Company within sixty (60) days from such default, the Company will pay therefor in cash the excess above referred to.

The Paid-up Term Insurance and Pure Endowment, if any, or the Paid-up Endowment Policy, provided for above, will be entitled to cash surrender values based upon the entire reserve thereon at the time of surrender, according to the above Mortality Table and rate of interest, less any indebtedness to the Company.

OPTIONS AT MATURITY

At the end of the Endowment Period the Insured shall have the choice of the following options:

1st. Surrender this Policy and receive in exchange therefor $ 1000.00, OR,

2nd. Surrender this Policy and receive in exchange therefor a Paid-up Life Policy for $ 1000.00, and $ 104.00 in cash, OR,

3rd Surrender this Policy and receive in exchange therefor a Paid-up Life Policy for $ 1116.00

Options 2 and 3 above are subject to evidence of insurability satisfactory to the Company

Installment and Trust Fund Privileges.

Installment Benefits

At any time when this Policy shall be in force and not assigned or pledged, the Insured may change the mode of payment thereof as a death claim, from payment in one sum, as provided on the first page, to payment by monthly installments, as stated below. In such case any installments maturing after the death of the Beneficiary shall be payable to the executors, administrators, or assigns of the Beneficiary.

The following Tables are based upon a Policy of $1,000, and the amounts shown thereby are to be increased proportionately for larger Policies. These installment benefits do not apply to Policies of less than $1,000.

Limited Installments

Monthly installments limited to the number selected.

Any number from twelve to three hundred may be selected by the Insured.

Number of Installments	Amount of Each Installment	Number of Installments	Amount of Each Installment
300	$4.96	144	8.46
288	5.09	132	9.09
276	5.24	-120-	9.84
264	5.39	108	10.75
252	5.57	96	11.90
-240-	*5.76	84	13.38
228	5.97	72	15.35
216	6.20	-60-	18.12
204	6.47	48	22.27
192	6.76	36	29.20
-180-	7.10	24	43.06
168	7.49	12	84.65
156	7.94		

*Illustration: If payment is to be made by 240 installments, the amount of each will be $5.76 for each $1,000 of insurance.

Trust Fund Privileges

The amount payable as a death claim under this Policy, if $1,000 or more, may be placed in trust with the Company. During the continuance of such trust, interest at the rate of three and one-half per centum per annum will be paid thereon to the Beneficiary. The payment of the first installment of interest will be made one year from the date of death of the Insured. At the termination of the trust the principal sum will be paid to the Beneficiary or to his executors, administrators, or assigns in event of the death of the Beneficiary prior to such termination.

Each installment payable during the specified number of years under the Limited and Continuous Installment provisions above or each payment of interest under the Trust Fund Privilege, may be increased by such amount from the interest earnings of the Company as may be apportioned from time to time by the Company.

Continuous Installments

Installments to continue during the entire life of the Beneficiary; two hundred forty monthly installments guaranteed.

(Payments by continuous installments cannot be selected if there be more than one beneficiary.)

Age of Beneficiary at Death of Insured	Amount of Each Installment	Age of Beneficiary at Death of Insured	Amount of Each Installment
10	$3.63	41	4.52
11	3.65	42	4.57
12	3.66	43	4.62
13	3.68	44	4.67
14	3.69	-45-	4.72
-15-	3.71	46	4.78
16	3.73	47	4.83
17	3.74	48	4.89
18	3.76	49	4.95
19	3.78	-50-	5.00
-20-	3.80	51	5.06
21	3.83	52	5.11
22	3.85	53	5.16
23	3.87	54	5.22
24	3.90	-55-	5.27
-25-	3.92	56	5.31
26	3.95	57	5.36
27	3.98	58	5.40
28	4.00	59	5.44
29	4.04	-60-	5.48
-30-	*4.07	61	5.51
31	4.10	62	5.54
32	4.14	63	5.57
33	4.17	64	5.59
34	4.21	-65-	5.61
-35-	4.25	66	5.62
36	4.29	67	5.64
37	4.33	68	5.65
38	4.38	69	5.65
39	4.42	-70-	5.66
-40-	4.47	and over	

*Illustration: Under a policy for $1,000, if, at the death of the Insured, the Beneficiary were 30 years of age at last birthday, the amount of each monthly installment would be $4.07, payable at least during the entire life of the Beneficiary. If the Beneficiary should die before 240 installments had been paid, the remainder of the 240 installments would be payable monthly to the executors, administrators, or assigns of the Beneficiary.

At any time when this Policy shall be in force and not assigned, the Insured may revoke any selection of installment benefits theretofore made.

No selection, change, or revocation shall be made except upon written direction of the Insured, or take effect until endorsed on this Policy by the Company at its Home Office.

The first installment shall be paid upon receipt by the Company at its Home Office of due proofs of the death of the Insured, and subsequent installments shall be paid monthly thereafter.

The Beneficiary can neither assign nor commute unpaid installments, unless such right be given expressly by the Insured to the Beneficiary in his written direction for payment by installments.

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TOTAL AND PERMANENT DISABILITY BENEFITS

Upon receipt and approval at the Company's Home Office, while this Policy and this Disability Provision are in full force, and before the default in the payment of any premium under this Policy or this Provision, of due proof that the Insured is totally disabled as defined in the Paragraph below entitled "Definition of Total Disability", such proof to show that such Total Disability has existed continuously for at least four months (such Disability of such duration being deemed to be permanent only for the purpose of determining the commencement of liability hereunder) the Company will grant the following Benefits:

Waiver of Premium. The Company will waive the payment of each premium under this Policy, beginning with that premium the due date of which next succeeds the date of commencement of such Disability; provided, however, that no premium shall be waived the due date of which is more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder; and

Disability Income. Pay to the Insured, or if such disability is due to or is accompanied by mental incapacity, to the Beneficiary of record under this Policy, a monthly income of Ten - - - - - - - - - - - - - - - - Dollars, such monthly income to be paid for each completed month of such continuous Disability beginning with the fourth such month; provided, however, that in no case shall any such monthly income be paid for the first three months of such Disability nor for any fractional part of a month of such Disability, nor for any period of Disability more than one year prior to the date of receipt at the Home Office of the Company of written notice of claim hereunder. Any income payment due but unpaid at the time of the Insured's death shall be payable to the person entitled to the proceeds of this Policy.

Any premiums so waived and any Disability Income so paid shall not be deducted from any other amount payable in any settlement of this Policy. Loan, surrender and non-forfeiture values shall be the same as though the premiums waived had been duly paid.

Definition of Total Disability. DISABILITY shall be considered TOTAL when the Insured is so disabled as the result of bodily injuries or disease that he is wholly prevented from performing any work, from following any occupation, or from engaging in any business for remuneration or profit; provided such Disability had its inception after the insurance under this Policy took effect and prior to the anniversary date of this Policy on which the Insured's age at nearest birthday is sixty. THE TOTAL AND IRRECOVERABLE LOSS OF THE SIGHT OF BOTH EYES OR THE SEVERANCE OF BOTH HANDS AT OR ABOVE THE WRISTS, OR OF BOTH FEET AT OR ABOVE THE ANKLES, OR SUCH SEVERANCE OF ONE ENTIRE HAND AND OF ONE ENTIRE FOOT, SHALL BE DEEMED TOTAL DISABILITY HEREUNDER.

The DISABILITY BENEFITS herein provided shall not be payable if the DISABILITY of the Insured shall have resulted from self-inflicted injury, from bodily injuries sustained by the Insured while participating in aviation or aeronautics, except as a fare paying passenger on a licensed aircraft operated by a licensed pilot, or sustained while the Insured is in the Military, Naval or Aerial Service (as a part thereof) in time of war; nor shall DISABILITY BENEFITS be included in any Paid-up Term Insurance or other Paid-up Benefit granted upon surrender or lapse of this Policy or at any other time or under any other conditions.

The provision hereunder for DISABILITY BENEFITS shall be suspended while the Insured is in the Military, Naval or Aerial Service (as a part thereof) in time of war, in which event that portion of the premium for this DISABILITY BENEFIT unearned during the period of such suspense shall be refunded.

Written notice of claim hereunder must be received at the Home Office of the Company during the life-time of the Insured and the continuance of such TOTAL DISABILITY. Failure to give notice as herein provided shall not invalidate any TOTAL DISABILITY claim if it shall be shown not to have been reasonably possible to give such notice and that written notice was given as soon as was reasonably possible.

Due proof of such TOTAL DISABILITY must be received at the Home Office of the Company while this Policy and this DISABILITY PROVISION are in force and before the expiration of one year after default in the payment of any premium, or if there shall have been no such default, not later than one year from the date of maturity of this Policy.

If due proof furnished as required above shall establish that such TOTAL DISABILITY commenced during the grace period of a premium in default, the due date of which premium was within a period of one year prior to receipt of notice of claim hereunder, DISABILITY BENEFITS shall be allowed as if such default had not occurred, provided such premium in default be paid to the Company together with interest thereon at the rate of six per centum per annum. Such premium and interest may be deducted from any amounts payable under this Policy or this DISABILITY PROVISION.

The Company shall have the right at any time during the first two years after receipt of such proof, and thereafter once a year, to require proof of the continuance of such TOTAL DISABILITY. If satisfactory proof is not furnished, or if it appears at any time that such TOTAL DISABILITY has terminated, no further premiums will be waived and no further DISABILITY INCOME payments will be made on account of such TOTAL DISABILITY.

This DISABILITY PROVISION shall forthwith terminate if any premium on this Policy or any premium payable for this DISABILITY PROVISION is not paid on its due date or within the days of grace unless waived in accordance with this DISABILITY PROVISION; or if the insurance under this Policy shall cease for any other reason.

The annual premium for the DISABILITY BENEFITS provided for herein is $ 4.31. Upon the due date of any premium called for by this Policy this DISABILITY PROVISION may be discontinued by returning this Policy to the Company for proper endorsement, the Policy to be accompanied by a written request, satisfactory to the Company, for such discontinuance, and thereafter the payment of the premium charged for this DISABILITY PROVISION shall not be required and the annual premium under this Policy shall be reduced to $ 31.99. In no event shall a premium be charged for this DISABILITY PROVISION on or after the anniversary of this Policy's date on which the Insured's age at nearest birthday is sixty years.

ACCIDENTAL DEATH BENEFITS

Death from Accident. If, during the premium paying period of this Policy, and before the anniversary of this Policy upon which the Insured's age at nearest birthday is sixty, the death of the Insured shall result, directly and independently of all other causes, from bodily injuries effected solely through external, violent and accidental means, within ninety days from the occurrence of the accident occasioning such injuries, the Company will pay, in addition to the face amount of this Policy, the sum of $ 1,000.00

Death from Travel Accident. In lieu of the Accidental Death Benefits provided for in the above Paragraph entitled "Death From Accident", if, during the premium paying period of this Policy, and before the anniversary of this Policy upon which the Insured's age at nearest birthday is sixty, the death of the Insured shall result, directly and independently of all other causes, from bodily injuries effected solely through external, violent and accidental means, while traveling as a passenger on a licensed public conveyance operated by an incorporated common carrier for the regular transportation of passengers, submarine or aeronautic travel not included, within ninety days from the occurrence of the accident occasioning such injuries, the Company will pay, in addition to the face amount of this Policy, the sum of $2,000.00

Provided, however, and the payment of any additional sum under either of the above clauses entitled "Death From Accident" or "Death From Travel Accident" is upon these express conditions: that at the time of the occurrence of the accident from which death resulted, and of death, all premiums under this Policy had been duly paid to the date of such accident and death, this Policy was in full force and effect, and no disability benefit had been granted hereunder; that there is a visible contusion or wound on the exterior of the body caused by the infliction of such injuries, save where death results from drowning or internal injuries are disclosed by an autopsy; that neither injuries nor death resulted directly or indirectly, from suicide or an attempt to commit suicide whether sane or insane, or from disease or bodily or mental infirmities; and that neither injuries nor death resulted from nor were in any way, directly or indirectly induced by: (a) Violation of or resistance to the law by the Insured; (b) Military or Naval Service; (c) Red Cross or other relief or welfare work in connection with actual warfare; (d) a state of warfare, riot, or insurrection; (e) participation in aeronautic or submarine operation (f) engaging in mining or any underground operations.

Accidental Death Benefits shall not be included in any Paid-up Term Insurance or other Paid-up Benefit granted upon surrender or lapse of this Policy or at any other time or under any other conditions.

These provisions for Accidental Death Benefits become null and void on the anniversary of this Policy upon which the Insured's age at nearest birthday is sixty or upon default in the payment of any premium under this Policy.

The annual premium for the Accidental Death Benefits provided herein is $ 2.00. Upon written request by the Insured, accompanied by this Policy for endorsement, the clauses entitled "Accidental Death Benefits" herein will be cancelled by the Company and premiums thereafter falling due under this Policy will be reduced to $ 34.30; or, upon the anniversary of this Policy upon which the Insured's age at nearest birthday is sixty the premiums thereafter falling due under this Policy will be so reduced.

CUT ON THIS LINE

☞ (RECEIPT FOR THE CURRENT YEAR'S PREMIUM MUST ACCOMPANY THIS DRAFT) ☜

Emergency Draft

Dated at _____

At sight pay to
the order of myself, ONE HUNDRED - - - - - - - - - - - - - - - DOLLARS

and charge against any claim that may arise under Policy No. 0000 issued by

New World Life Insurance Company, of Seattle, Washington

to John Doe - (Deceased)

It is hereby understood that the payment of the above amount is a loan to the Beneficiary, made in consideration of the death of the Insured, and the acceptance and the payment hereof shall not be considered as an acknowledgment, by the Company, of the validity of any claim by reason of said policy.

TO NEW WORLD LIFE INS. COMPANY,
SEATTLE, WASHINGTON

_____
Beneficiary

I hereby certify that the insured under this policy is deceased, and that the deceased did not commit suicide.

_____
PRESIDENT—CASHIER

DATED _____ _____
(INSERT NAME OF BANK)

TO THE BENEFICIARY

In the event of the death of the Insured, take this policy together with all receipts and other papers in relation thereto, to your banker. Receipt for the current year's premium must accompany the draft.

The death of the Insured must be certified to by the President or Cashier of a bank. Upon its receipt properly executed, this draft will be honored for an amount not exceeding the per centum of amount of this policy.

Received from New World Life Insurance Company _____ Dollars
_____ 19__
in full of all claims under this Policy, and said Policy is hereby surrendered for cancellation.

_____

_____

_____

_____

Witness _____

5 YEAR ENDOWMENT MATURING AT AGE 85
(PREMIUMS PAYABLE FOR 20 YEARS).
NON-PARTICIPATING.

CASH AND PAID-UP VALUES.
SEE BACK PAGE.

POLICY AND RIDER

SOLD

New World

Life Insurance Company

HOME OFFICE

NAME OF INSURED

John Doe

AMOUNT $1000.00

PREMIUM $36.30

DATE OF

POLICY May 1, 1922

NOTIFY COMPANY OF ANY CHANGE IN POST OFFICE ADDRESS.

In case of any question relative to this Policy write direct to the Company. It is not necessary to employ any person, firm or corporation to collect the insurance or to secure any benefit under this Policy.

FORM 5 AM-D-1920

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[fol. 78] IN SUPREME COURT OF THE UNITED STATES

JOINT STIPULATION OF COUNSEL THAT THE PRINTING OF STIPULATION EXHIBITS "A", "B" AND "C" BE DISPENSED WITH IN THIS COURT—Filed Sept. 28, 1939

Since Stipulation Exhibit A and Stipulation Exhibit B, certified by the Clerk below as Exhibits A and B, respectively, and by reference made a part of the findings by the Court below (R. 29, 30), are copies of letters of final determination by the Commissioner of Internal Revenue of petitioner's income tax liabilities for the taxable years 1929 and 1930, and 1931 and 1932, respectively; and since Stipulation Exhibit C, certified by the Clerk below as Exhibit C and by reference made a part of the findings by the Court below (R. 31), is a statement showing the amount of cash transactions by petitioner's branch offices in the underwriting and investment departments, respectively, for 1931 and 1932; and since the printing of said Stipulation Exhibit A, Stipulation Exhibit B and Stipulation Exhibit C, certified, as aforesaid, by the Clerk below as Exhibit A, Exhibit B and Exhibit C, respectively, does not appear to be necessary for [fol. 79] this Honorable Court to reach a proper understanding of the issues involved in the within cause, and the printing thereof would result in an unnecessary cost to the petitioner herein;

It is agreed that, with the permission of this Honorable Court, which is hereby prayed for, the printing of said Stipulation Exhibit A, Stipulation Exhibit B and Stipulation Exhibit C, certified by the Clerk below as Exhibit A, Exhibit B and Exhibit C, respectively, be dispensed with.

This is signed in duplicate.

Walter E. Barton, Investment Building, Washington, D. C., Counsel for Petitioner. Robert H. Jackson, Solicitor General of the United States, Counsel for Respondent.

[fol. 79½] [File endorsement omitted.]

[fol. 80] IN SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above-entitled cause, and good cause therefor having been shown,

It is Now Here Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended until and including October first, 1939.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 11th day of August, 1939.

Endorsed on cover: Enter Walter E. Barton. File No. 43,824. Court of Claims. Term No. 417. New World Life Insurance Company, Petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed September 25, 1939. Term No. 417, O. T., 1939.

[fol. 81] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—May 20, 1940

On Petition for Writ of Certiorari to the Court of Claims.

A petition for rehearing having been submitted in this case;

Upon consideration thereof, it is ordered by this Court that the petition for rehearing be, and the same is hereby, granted.

And it is further ordered that the order denying certiorari entered November 22. 1939, be, and the same is hereby, vacated; and that the petition for writ of certiorari herein be, and the same is hereby, granted, limited to the second question presented thereby.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.